A LETTER

FROM A

MEMBER of PARLIAMENT

TO

ONE OF HIS CONSTITUENTS,

ON THE

Late Proceedings of the Houſe of Commons in the Middleſex Elections.

WITH A

POSTSCRIPT,

CONTAINING

Some OBSERVATIONS on a Pamphlet entitled, "The Caſe of the late Election for the County of "Middleſex conſidered."

Thus to regulate Candidates and Electors, and new-model the Way of Election, What is it but to cut up the Government by the Roots, and poiſon the very Fountain of Public Security?

LOCKE *on Civil Government.*

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MDCCLXIX.

A

LETTER, &c.

SIR,

THE conſtitutional Manner in which I received, and mean to hold, my Seat in Parliament, makes me think myſelf obliged to render an Account of my Conduct in every Public Meaſure, which may materially affect their Intereſt, to my Conſtituents. However faſhionable it may be for thoſe to treat lightly this Duty, who either do not, from the Manner in which they procured their Seats, feel its Force; or are aſhamed of not having in their Conduct ſince, ſubmitted to its Influence; I do not think I can be ac-

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cuſed of carrying the Idea too far when I ſay, Though I may think myſelf at liberty, in great national Meaſures, to follow my own Judgment ſolely, and to be influenced only by thoſe Arguments which are brought in Parliament; yet in Queſtions of internal Polity, where the Intereſt of the particular Place I repreſent may be concerned, or in Queſtions affecting the *ſubſtantial Rights* or *Privileges* of *every individual Elector* or *Freeman* in *this Kingdom*, I ſhould think myſelf bound to obey implicitly the Inſtructions of thoſe who ſent me, had they given me any: And if from a Confidence in my Zeal for, and Attention to, the Preſervation of their Liberties, they have not thought it neceſſary to give me any particular Directions, I do not hold myſelf the leſs bound to give them an Account of the Steps I have taken towards the faithful Diſcharge of ſo honourable, ſo important, ſo unlimited a Truſt.

I think myſelf at this Time particularly obliged to give you an Account of my Conduct in the late Proceedings of the Houſe of Com-

Commons upon the Middlesex Elections; not only because they are, in my Opinion, Questions which affect the *substantial Rights* and *Privileges* of *every individual Elector* and *Freeman* in *this Kingdom*; but because, situated as you are at a Distance remote from the Capital, you may have been induced, by News-Paper Writings, to look upon the first Foundation of these Disputes to be the Case of a *turbulent* and *distressed* Man of *bad Character*, taken up by some *disappointed Statesmen* and *discarded Courtiers* to serve their own Purposes, by availing themselves of the Clamour of a *deluded Rabble* to *disturb* and *distress* the Councils of an *insulted Prince*. To clear myself, therefore, from the Suspicion of having countenanced Sedition, and promoted the Views of Faction, by distressing that Government which I set out with an Intention to support, as far as I could consistently with the Feelings of an honest, and the Character of an independant Man, will be the Object of this Letter.

Having had the Fortune (whether good or bad you muſt determine) to differ in every one of thoſe Meaſures from the Majority of thoſe Members of the Houſe who were preſent, I will candidly lay before you, as far as I am able, the Hiſtory of the whole Tranſaction, the Reaſons urged why the Houſe ſhould take thoſe Steps, and the Conſiderations that weighed with me to oppoſe them.

It was not till many Months after Mr. Wilkes's Election that a Motion was made for his Expulſion. The Truth is, he would probably have been ſuffered quietly to take his Seat, at the Expiration of his Confinement, *notwithſtanding his previous Crimes*, had he not given freſh Offence to the Miniſtry by a Petition preſented to the Houſe, complaining of Grievances, and a libellous Preface to an official Letter of Lord Weymouth's, publiſhed in the News-Papers. I am warranted in this Aſſertion by the Expulſion having been ſo long delayed, though two of the Crimes, mentioned in the Votes as the

the Foundation of that Reſolution, were notorious previous to his Election, and what he was actually ſuffering Impriſonment for at the Time of the Meeting of Parliament; and the other was the very Libel I have juſt mentioned, which was deemed ſo a ſhort Time before in the Houſe, probably to ſerve in Part this Purpoſe. But, without entering into this Argument, or conſidering the Propriety of making the Houſe of Commons the Inſtruments of miniſterial Reſentment, and a Seat in Parliament the Reward of quiet Submiſſion to unconſtitutional Perſecutions; I will ſtate to you the Merits of the Petition, as they appeared upon the Face of the Proceedings.

It was urged, That a Man guilty, and convicted, of ſuch Crimes was unfit to be a Repreſentative of the People: That it was inconſiſtent with the Dignity of ſo great an Aſſembly as the Houſe of Commons, to ſuffer ſuch a Man to remain amongſt them: That a cenſorial Authority muſt neceſſarily reſide ſomewhere, and could no where be ſo properly

properly ſituated in this Conſtitution, as in the Houſe of Commons.

It was urged on the other hand, That the very Principles of our Government did not admit of two Puniſhments for the ſame Crime: That Mr. Wilkes had already been expelled for one of theſe Crimes: That for another he was condemned by the known Laws of the Land to ſuffer Impriſonment: That the third being a Libel upon one Miniſter only, it might be of dangerous Conſequence to make a Precedent of Expulſion from that Aſſembly for having too freely cenſured the official Conduct of a ſingle Miniſter; and, above all, it was inſiſted upon, That a Charge of an accumulative Nature was new, and unjuſt, as it might ſo happen, that though * a Majority might acquit him upon each of thoſe Crimes, yet accumulated Minorities might make a Majority upon the Whole to condemn.

* Vide Lords Proteſt in Sacheverel's Caſe.

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As all theſe Arguments, and, indeed, all the others that were uſed, ſeemed to depend upon the Circumſtances of this particular Caſe, it may not be improper for me to examine it upon more general Principles.

The Houſe have undoubtedly a Right to expel; but it by no means follows, that they did right when they exerciſed it upon this Occaſion. There muſt be a ſupreme uncontroulable Power in all Governments lodged ſomewhere; but to ſay that Power cannot be abuſed, and perverted to Purpoſes very different from thoſe for which it was at firſt intended, would be to ſay, thoſe to whom it was intruſted were more than Men; and to deny that there has been an Abuſe in ſome Inſtance of every Power that has ever been delegated, would be to diſpute the Evidence of all Hiſtory. The firſt Exerciſe we find upon Record of the Power of Expulſion was in Queen Elizabeth's Reign. From that Time till the preſent it has never been employed but againſt Perſons who have been found guilty of Crimes which the Electors, at the Time of their Choice, might not be ſup-

ſuppoſed to know *; or Members who have miſbehaved in the Houſe.

In the firſt Caſe, nothing can be more reaſonable or leſs dangerous to the Privileges of the Electors than to ſend back to them a Man in whom they may have been deceived, to be aſſured, that, ſo circumſtanced, he is the Man of their Choice.

The Neceſſity of ſuch a Power in the Houſe of Commons in the ſecond Caſe, proceeds from two Principles; the one abſolutely neceſſary to all well-ordered Govern-

* This is the Doctrine expreſsly laid down in the Caſe of Fitzherbert in D'Ewes's Journal. *Multa ſunt quæ fieri non debent, quæ tamen facta tenentur bona.* It had been a good Exception againſt his Election to ſay he was out-lawed, but *'tis no Diſability to him being elected.* Mr. Tanfield ſpeaking, held that a Perſon outlawed might be a Burgeſs of the Houſe, *wherein he made a Difference where Exceptions grew upon Matter before the Election, and where after.* If the Exception grew *after*, then a Burgeſs not to be one of the Houſe. Upon theſe Reaſons Mr. Fitzherbert was allowed to ſit, the Outlawry being *previous* to his Election.

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ments, That there ſhould be no Crime for which there is not a Tribunal and a Puniſhment; the other peculiar to the Form of our Conſtitution, and eſſential to the Freedom and Exiſtence of Parliaments, That no Man ſhould be queſtioned elſewhere for what he does in Parliament.

It would be taking up your Time very unneceſſarily to prove, that none of the three Crimes laid to Mr. Wilkes's Account came within this Deſcription. The two firſt were notorious before his Election, he having been found guilty of them by Juries of the *very County* for which he was choſen; the third was certainly neither an Offence againſt Parliament, nor committed in Parliament. For theſe Reaſons, and many others, which it would be tedious to mention, I, with many others, thought Mr. Wilkes ſhould not have been expelled. *Dis aliter viſum:* The contrary Reaſoning prevailed with the Majority, and the Expulſion took Place.

Had Mr. Wilkes been choſen for any petty or venal Borough, the Conteſt would proba-

bly have ended here; the diſtreſſed Circumſtances of the Perſon concerned, the Inequality of the Conteſt between any Individual and a Board of Treaſury determined to carry their Point, would have made the Attempt deſperate, and the Defeat certain: But the Miniſtry had not ſo advantageous a Field of Battle. The Freeholders of Middleſex (whether actuated by a Spirit of ſtubborn Faction, or the laudable Reſolution of firmly ſupporting every Tittle of what they thought their inherent indefeaſible Rights, it is not to my preſent Purpoſe to examine) returned Mr. Wilkes with all his Imperfections on his Head. He went to them branded with a conteſted Expulſion; they ſent him back honoured with an unanimous Re-election. Should he be received? The Honour, the Firmneſs, perhaps the Pride of Adminiſtration forbad it. It would have been in vain that they had made an odious Exertion of a Legal Power, if the End could be ſo eaſily fruſtrated by the Voice of the Middleſex Freeholders. Mr. Wilkes was, at all Events, to be excluded. No Price was thought too great for a Victory which was to eſtabliſh their

Power,

Power, and proclaim their Triumph.——— The Way to do it effectually was the only Difficulty.

And here we come to a melancholy Proof in Public, of what we often ſee in Private Life, that the original Crime is ſeldom ſo great as thoſe which an Attempt to conceal or ſupport it brings on. Like thoſe Women who commit Murder to avoid the Shame of Fornication, the Miniſtry, that they might not appear to point all their Proceedings to Mr. Wilkes's Caſe, dared to innovate the Cuſtom of Parliament, and to depart from the only Precedent of Incapacity upon Re-election (that of Sir Robert Walpole, who was declared to be incapable, having been expelled for notorious Corruption and Miſapplication of Public Money,) by declaring ſimply, "That Mr. Wilkes having been expelled, was and is incapable;" making, for the firſt Time, Expulſion *ex Vi Termini* to include Incapacity. The Freeholders of Middleſex were ſent once more to an Election, which ended in an unanimous Return of Mr. Wilkes the third Time.

Upon the Return being called for, no Oppoſition was made to declaring the Election void, every Body allowing that the Reſolution of the Houſe *was binding upon itſelf*, for the Remainder of the Seſſion. An unſucceſsful Attempt was, indeed, made to prevent the iſſuing a New Writ by thoſe whom the Miniſtry and their Friends have called *factious*; that the County of Middleſex might have Time to cool before the next Seſſion, and conſider whether they could not fix upon ſome Perſon as worthy of their Confidence as Mr. Wilkes, and might not chuſe to drop a Conteſt with the Houſe of Commons, in which a Point ſo eſſential to the Liberties of all the Freeholders in the Kingdom ſeemed to be in Danger of an adverſe Deciſion; and that the Members of the Houſe might have Time to conſult their Conſtituents during the Summer Receſs, and to ſee how far the late Proceedings had alarmed the Fears, or met with the Approbation of the People; whoſe Opinions are by no means to be ſlighted in Points that affect their Liberties *. Indeed, I will go ſo far as

* The Voice of the People in Things of their Knowledge is ſaid to be as that of God. *Comm. Apol. to Jam.* I.

to

to ſay, in a free Country they are entitled from their Repreſentatives and Governors to a Sacrifice of Speculative Opinions, even if juſt, to violent Prejudices in Favour of what they think, tho' miſtakenly, their Liberties. In this I would not be underſtood to ſpeak a Language by any means neceſſary to ſupport the preſent Cauſe, or merely my own Sentiments, but thoſe of former great Miniſters, who in the Inſtances of the Jew and Exciſe Bills, did not tell the People, that they were bound by, and muſt ſubmit to, the Deciſions of the *whole* Legiſlature; but wiſely, greatly, and conſtitutionally made a Sacrifice of a new Law to an old Prejudice; preferring the Hearts to the Purſes of the People; and thinking the Satisfaction of old Subjects of more Importance than the Acquiſition of new ones. If the former Proceedings were approved of, the Miniſtry would have returned ſtrengthened by the Concurrence of the reſt of the Kingdom againſt the ſingle County of Middleſex. If, on the other Hand, they were generally diſapproved of, they would have found themſelves at liberty by the Orders of the Houſe to reſcind their former Reſolutions, and follow the

the Example of their Predeceſſors, by preferring the Affection to the Obedience of the People.

Unfortunately it appeared, upon this Occaſion, that whatever may be the Virtues and Acquiſitions of Adminiſtration, Moderation and Popularity are not to be reckoned amongſt them. To have ſtopped here, would have had the Appearance of paying ſome Attention to the Cries of the People, which were to be ſtifled, not ſoothed; and like the Roman Generals, they thought themſelves not entitled to triumph till the conquered People had paſſed under the Yoke. The New Writ was iſſued; and, to prevent a Repetition of the ſame Scene of Free Election in the County of Middleſex, and Incapacity in the Houſe of Commons, Col. Luttrell, a young Man, Member for a Corniſh Borough, an Officer in the Army, Heir to a good Fortune in England and Ireland, was induced to vacate a Seat which he held by a Conſtitutional Election, to ſtand for a County, in which he had neither Property nor Popularity, and could by no means procure a Majority. The Return was

again

again in Favour of Mr. Wilkes; the Election was again declared void.

So far the Conteſt had been a melancholy one between a Part of the Electors, and the Body of the Electors; ſtill if the Houſe of Commons was wrong, it was only the Oppreſſion of one County, by depriving them for a Time of a Part of their Share in the Repreſentative Body: I ſay for a Time, becauſe the Reſolutions of an Houſe of Parliament are only binding for one Seſſion: But when a Motion was made by a Gentleman in Adminiſtration to admit Col. Luttrell, with a great Minority, as the Sitting Member, a new, a more ſerious, and more alarming Scene opened upon us. It was no longer a ſpeculative or temporary Injury to one Sett of Electors, but an actual Violation of the Rights of every Elector in the Kingdom, that became the Subject of the Debate. Such is the Excellence of our Conſtitution, that its Strength appears to increaſe in Proportion to the Danger of the Attack. A ſingle trivial Outwork may ſometimes be ſurpriſed without much Difficulty; but whenever the grand Citadel

Citadel is to be attacked, the Fortifications are found ſo ſtrong, as to have made every Attack hitherto end in the Deſtruction of the Aſſailants. I wiſh I may be miſtaken when I ſay, I fear they were all upon this Occaſion, taken by one *Coup de Main*.—

To juſtify this Proceeding, it was neceſſary that the Houſe ſhould have a Power to create Incapacity—That Expulſion *ex Vi Termini* ſhould convey Incapacity—That the Law and Cuſtom of Parliament ſhould be equal to the Law of the Land—That a ſingle Reſolution of one Houſe of Parliament ſhould be that Law of Parliament—That a ſingle Precedent ſhould be that Cuſtom of Parliament—and laſtly, That there ſhould be ſuch a Precedent.—A Failure in any one of theſe Caſes made the voting a Man in upon a Minority illegal and unjuſt. What then muſt we think of the Attempt, if no one of theſe Claims is warranted by the Law of Parliament?

To prove that Expulſion *ex Vi Termini* does not induce Incapacity, there needs but a very ſlight Inſpection into the Journals of the Houſe of Commons, as it will be found there

there, that, wherever they thought a Perſon incapable, they always declared their Opinion (for I think I ſhall prove it was no more) in expreſs Terms; as in the Caſe of Arthur Hall, which is as follows:

" Anno 23 Eliz. 1580, Mr. Arthur Hall, " Burgeſs for Grantham, for writing a " Book derogatory to the Authority, Pow- " er, and State, of the Commons Houſe " of Parliament, had Judgment, *Nemine* " *contradicente*, 1. To be impriſoned in " the Tower for Six Months, and from " thence till he had made a Retractation " of his Book. 2. To be ſevered and cut " off from being a *Member of that or any* " *future Parliament*. 3. A Fine of Five " Hundred Marks to the Queen. 4. His " Book and ſlanderous Libel adjudged ut- " terly falſe and erroneous."

In the 27th of Eliz. Doctor Parry was diſabled to be any longer a Member of the Houſe, and a Warrant directed for chuſing another Member in his Stead.

Sir Chriſtopher Pigot was expelled the Houſe for abuſing the Scotch, and committed to the Tower. A Motion afterwards was made that he ſhould be reſtored.

Nov. 2, 1641, Mr. Benſon having granted Protections to ſeveral Perſons who were not his menial Servants, and having done this with corrupt Intentions, was expelled, and declared unfit and incapable ever to ſit in Parliament, or be a Member of that Houſe hereafter.

By theſe Examples it appears, that where the Houſe meant to declare their Opinion of the Unworthineſs of a Member, they did it in expreſs Terms: That in other Caſes Members expelled were actually re-admitted; conſequently, that they never underſtood the Penalty of Incapacity to attend the Sentence of Expulſion.

To prove that Expulſion *ex Vi Termini* does create Incapacity, they have recourſe to the Cuſtom of Parliament, which is a Part of the Common Law; and to prove this

this Cuſtom, they bring one Precedent. I will, therefore, examine how far Cuſtom is a Part of the Common Law, the Force of Precedent in making that Cuſtom, and how far the Precedent quoted will anſwer that End.

The very Word *Cuſtom* ſignifies frequent Repetition of the ſame Act; and it derives its Authority in the Common Law from a Preſumption, that whatever has been repeatedly and uninterruptedly practiſed for a long Continuance of Time, muſt have been juſt in its Origin, and found convenient in the Exerciſe. Lord Hale, in his Hiſtory of the Common Law, ſpeaking of that Part of it which is founded upon Cuſtom, ſays, "The Common Law "gives to thoſe Cuſtoms that it adjudges "reaſonable, the Force and Efficacy of "their Obligation. The Common Law "determines what is that Continuance of "Time which is ſufficient to make ſuch a "Cuſtom. The Common Law does authoritatively decide the Expoſition, Limits, and Extenſion, of ſuch Cuſtoms. "This Common Law, though the Uſage,

" Practice, and Deciſions of the King's " Courts of Juſtice may expound and " evidence it, and be of great Uſe to il- " luſtrate and explain it; yet it cannot " be authoritatively altered but by Act of " Parliament." *Hale's Hiſt. of the Common Law*, Page 26.

By this it appears to be neceſſary for a Cuſtom, before it can carry with it the Force of Law, to be reaſonable, and to have that *Continuance of Time* which is ſufficient to make ſuch a Cuſtom; by which it is plain, that *ſome* Continuance is neceſſary, and that a ſingle Act cannot, therefore, be called Cuſtom. This is the Doctrine plainly laid down at Common Law, as it is obſerved in Weſtminſter-Hall. It remains to enquire, Whether the Cuſtom of Parliament is to be judged of by the ſame Rule? I will, therefore, ſtate to you what have been the Opinions of able Men in Parliament upon what is neceſſary to make that Cuſtom of Parliament which is the Law of Parliament.

In D'Ewes's Journal, Page 638, it is ſaid, " *Ratio Legis* is *Anima Legis*; and " he

" he that preſents a Precedent without a " Reaſon, preſents a Body without a Soul." The great Lord Cowper, in the Caſe of Aſhby and White, ſays, " Law depending " on Cuſtom certainly conſiſts not in, and " is not to be made out by, one Act, but " by often reiterated Acts. The Law and " Cuſtom of Parliament, as we conceive, " is to be determined by conſtant Courſe " and Practice, and not one Precedent." *Lords Proteſt in Sacheverel's Caſe.*

The Uſe of Precedents in Parliamentary Proceedings is not to promote but check Innovation, by warning the Houſe (which certainly has a Right to do many Things for which there are no Precedents, or elſe Precedents could never have exiſted) to be extremely cautious, and maturely to conſider the Expediency of any Step which their Anceſtors have never found it neceſſary to take before (if there be no Precedent); or to conſider the Reaſon and Succeſs of the former Precedent (if there be any), to ſee if their Caſes are exactly ſimilar, and the Event likely to be what is deſired.

deſired. It is not till after reiterated Acts and long Experience of the Advantages of a particular Mode of Proceeding, that the Reaſons on which it is founded are to be taken for granted. To ſuppoſe that every Thing is to be done for which there is a Precedent, and Nothing for which there is not one, would be to adopt an Idea incompatible with that of the Exiſtence of a Legiſlative Body; and to give to a ſingle Precedent an Authority equal to that of Cuſtom, founded upon frequent Repetition of the ſame Act, would be to deſtroy the Effect of that excellent Rule, calculated to ſecure our Conſtitution from the Danger of haſty Innovation. A ſingle Precedent, therefore, in the beſt Times, formed upon the moſt equitable Principles, can have no Weight whatſoever but from the Goodneſs of the Reaſons upon which it is founded, and the exact Similarity of the Caſe from which it ariſes, to that to which it is to be applied. The very worſt Precedents of the moſt violent Times will do to prove beyond what we ought certainly not to go in a like Occaſion; the very recurring

curring to Precedent implying a Repugnancy to Alteration, and barring a Poſſibility of exceeding it; ſince the Moment it is exceeded, it ceaſes to be the Rule which is followed and conformed to.

Having thus fairly ſtated the Parliamentary Doctrine of Precedents upon general Grounds, it remains for me to try this ſingle Precedent by them, and then to allow it its full Force in the preſent Caſe, and ſee if it comes up to what is contended for. The Caſe is that of Mr. Walpole.

"On the 23d of Feb. 1711, a Petition of the Freemen and Free Burghers of the Borough of Kings-Lynn in the County of Norfolk, was preſented to the Houſe, and read; ſetting forth, that Monday, the Eleventh of February laſt, being appointed for chooſing a Member to ſerve in Parliament for this Borough, in the Room of Robert Walpole, Eſq. expelled this Houſe, Samuel Taylor, Eſq. *was elected their* Burgeſs; but John Bagg, preſent Mayor of the ſaid Borough, *refuſed to return the ſaid Samuel Taylor*,

" *Taylor, though required ſo to do*; and re-
" turned the ſaid Robert Walpole, though
" expelled this Houſe, and then a Pri-
" ſoner in the Tower; and praying the
" Conſideration of the Houſe."

" March 6th. The Order of the Day
" being read for taking into Conſideration
" the Merits of the Petition of the Free-
" men and free Burghers of the Borough
" of Kings-Lynn in the County of Nor-
" folk, and a Motion being made that
" Counſel be called in, upon a Diviſion
" it was reſolved in the negative. Tellers
" for the Yeas, Sir Charles Turner, Mr.
" Pulteney, 127. Tellers for the Noes,
" Sir Simeon Stuart, Mr. Forſter, 212.—A
" Motion being made, and the Queſtion
" put, That Robert Walpole, Eſq. hav-
" ing been, this Seſſion of Parliament,
" committed a Priſoner to the Tower of
" London, and expelled this Houſe, for
" an high Breach of Truſt in the Execu-
" tion of his Office, and notorious Corrup-
" tion, when Secretary at War, was, and
" is, incapable of being elected a Mem-
" ber

" ber to ſerve in this preſent Parliament;
" it was reſolved, upon a Diviſion, in the
" affirmative. Then a Motion being made,
" and the Queſtion put, That Samuel
" Taylor, Eſq. is duly elected a Burgeſs
" to ſerve in the preſent Parliament for
" the Borough of Kings-Lynn in the
" County of Norfolk, it paſſed in the ne-
" gative. Reſolved, That the late Elec-
" tion of a Burgeſs to ſerve in the pre-
" ſent Parliament for the ſaid Borough of
" Kings-Lynn in the County of Norfolk,
" is a void Election."

This Precedent is liable to every Objection that can be conceived againſt one. It was made in violent Times, without any Example; neither juſt in the Intention, which was certainly to exclude a Member from the Houſe who was formidable to the Miniſtry of the Day, from his Abilities and Boldneſs (perhaps the only exact Similarity of the Caſe from which the Precedent aroſe, to that to which it was applied), nor honourable in the Event; ſince the Perſon ſo expelled was by all

ſucceſſive Houſes ſuffered to ſit for thirty Years, which he certainly would not have been, had they thought him as culpable as that Houſe of Commons which expelled him, and themſelves poſſeſſed of that cenſorial Power of which we have lately heard ſo much. This Precedent, however, ſuch as it is, was ſtrictly adhered to ſo far as it might ſeem to give a Sanction to the Perſecution of the Party concerned, but ſlighted in the ſingle Inſtance where it could poſſibly have been of any Authority, by preventing the voting in another Perſon upon a Minority, and ſerving as a Barrier to the Rights of the Freeholders, againſt the undiſcerning Rage of an Adminiſtration, who, in their Eagerneſs to make a Victim to their Reſentment, forgot to avail themſelves of the Forms of Law, and by violating the ſacred Sanctuary of the Conſtitution, made a Martyr to Liberty, where they pretended an Example of Juſtice.

It appears, therefore, that this Incapacity produced by the Expulſion, is ſo far from being the invariable reiterated Uſage of

of Parliament, which it muſt have been to be the *Lex & Conſuetudo Parliamenti*, that it ſtands upon a ſingle bad Precedent, incompletely followed, not more ineligible from the Motives which produced, than inapplicable from the Circumſtances that attended it; —contradicted by many others where the Incapacities were declared expreſly, and modified according to the Opinion of the Houſe. Theſe Precedents have this peculiar Advantage, beſides their Number, that they were all in the Caſes of Perſons at the Time under the Diſpleaſure of the Houſe, and who muſt conſequently be ſuppoſed rather to have met with ſtrict Juſtice than Favour.

Having therefore proved that Incapacity by the Law and Cuſtom of Parliament does not follow of courſe upon Expulſion,—if I were an Advocate for Mr. Wilkes, I could with the greateſt Safety reſt my Cauſe here. The firſt Sentence not affecting him, (he not having therein been declared incapable, as was done in the Caſes of Mr. Hall, Sir Giles Mompeſſon, Mr. Benſon, and others) the Injuſtice and Illegality of Enforcing the

ſubſequent Determination is obvious; ſo obvious, that I ſhall content myſelf with following the Miniſterial Mode of quoting one Caſe, and that not from remote or obſcure Times. — But to prove my Impartiality, and Readineſs to do them Juſtice where they have ſhewn a Tenderneſs for the Liberties of the Subject, and an Averſion to extending the Powers of the Houſe of Commons, I will take it from the laſt Seſſion of Parliament. It is the Caſe of the Cumberland Sheriff (a favourite one of theirs), who was committed to the Cuſtody of the Serjeant for a Violation of the Privileges of Election. It was underſtood generally that this Gentleman would petition to be diſcharged, and be of courſe reprimanded: Indeed, it was one of the Reaſons urged againſt the ſeverer Puniſhment of ſending him to Newgate, which was propoſed, that the Diſgrace of the Confinement, and the Reprimand he would receive from the Speaker, would be a ſufficient Warning to others not to be guilty of the ſame Crime. When towards the Cloſe of the Seſſion it appeared that this Gentleman was not likely to petition a Motion was made,

That

That he ſhould be brought to the Bar to receive a Reprimand, and be diſcharged; which was over-ruled, upon its being ſuggeſted, that, as it had been omitted to be mentioned in the firſt Sentence, it would be an unuſual and unjuſtifiable Thing to inflict a ſecond Puniſhment. This Reaſoning prevailed, tho' it had been generally underſtood that the Reprimand would accompany the Diſcharge, and was included *ex Vi Termini* in the firſt Sentence.

But ſomething more important than the Wrongs or Misfortunes of a ſingle Man having induced me to give you the Trouble of this Letter, I muſt proceed farther, and ſee whether the Houſe of Commons is poſſeſſed by Law of a Power to incapacitate a Member choſen by the People.

The Power of creating Incapacity *, did it exiſt at all in the Houſe of Commons,

* Sir Edward Hobby (in Fitzherbert's Caſe in Queen Elizabeth's Reign) ſaid, "The Party out-lawed is "not out of his Wits, therefore capable; and then is "a Man able to be choſen, and idoneus to be a Bur-

muſt

muſt ariſe from the Law and Cuſtom of Parliament, founded upon Uſage from Time out of Memory. If Uſage be a good Law, from a Preſumption that the Practice continued ſo long from the approved Convenience of it, Non-uſage and Diſcontinuance will, at leaſt, give as good Reaſon to preſume it has been found inconvenient, and therefore ceaſed. But the Caſe is infinitely ſtronger, when it appears that a Body ſo laudably jealous as the Houſe of Commons have ever been of every Thing that relates to the determining the Rights of Election, have found themſelves obliged to call in the Aſſiſtance of the other Branches of the Legiſlature, when they thought it neceſſary, for the Preſervation of the Freedom of Election, and Independence of Parliament, to reſtrain the natural Right of the People to delegate whom they pleaſed to take care of their Intereſts, and give their Conſent to the Abridgement of their Liberties by Legal Reſtrictions.

" geſs "--It is plain the Houſe of Commons in thoſe Days had no Idea of a Power in themſelves to create Incapacity.

That

That this has ever been the Caſe, is notorious from the many Statutes made for this Purpoſe, not only in the Caſe of Perſons coming under general Deſcriptions, ſuch as Minors, Perſons not poſſeſſed of 600 Pounds *per ann.* for Counties, and 300*l.* for Boroughs, but of Perſons under particular Circumſtances; as, by 30 Char. II. "thoſe who ſhall wilfully "preſume to ſit in the Houſe without taking the Oaths and ſubſcribing the Teſt "whenever the Houſe ſhall require it, every Member ſo preſuming to ſit ſhall "*be adjudged, and is declared*, to be uncapable and diſabled in Law, to all Intents and Purpoſes, to ſit in the ſaid "Houſe, or give any Voice therein during "that Parliament. And in Caſe any Member "of the Houſe ſhall by Virtue of this Act "be diſabled to ſit or vote in the Houſe, "then, without any further Conviction or "other Proceedings againſt ſuch Member, "the Place for which he was elected is declared void, and a new Writ ſhall iſſue "out of Chancery, by Warrant from the "Speaker and Order of the ſaid Houſe, for "the Election of a new Member in Place

of

" of ſuch Member, ſo diſabled to all In-
" tents and Purpoſes, as if ſuch Member
" or Members naturally died."

By the Statute of 4 5 Ann. Cap. 8. " If
" any Perſon being choſen a Member of
" the Houſe of Commons ſhall accept of an
" Office of Profit from the Crown during
" ſuch Time as he ſhall continue a Mem-
" ber, his Election ſhall be, and is hereby
" declared to be, void, and a new Writ ſhall
" iſſue for a new Election, as if ſuch Per-
" ſon ſo accepting was naturally dead.
" Nevertheleſs, ſuch Perſon ſhall be capable
" of being again elected, as if his Place had
" not become void as aforeſaid."

By the Statute of 7 George I. C. 28. we find the late Governor, Deputy-Governor, Directors, Caſhier, and Accomptant of the South-Sea Company, and John Aiſlabie, Eſq; diſabled for ever to ſit or vote in Parliament.

Here we ſee the whole Legiſlature, in Caſes merely relating to the Houſe of Commons.

mons, declaring Diſqualification in all the different Degrees, for the Remainder of the Parliament, for Life, or ſubject to an immediate Re-election; a Power which had the Houſe of Commons at that Time conceived to have exiſted ſingly in themſelves, they would never have been contented (from their known and conſtant Jealouſy in whatever relates to their Privileges) to have ſhared with the other two Branches: Nay, we find them in the firſt of theſe Statutes, that of the 30th of Charles II. concurring with the King and Lords, in marking out the exact Difference between the Power of the whole Legiſlature, by whom the Incapacity *is declared in Law*; and the Houſe of Commons, by whom *it ſhall be adjudged.*

The Expreſſion, "That the Writ ſhall "iſſue for the Election of a new Member "in the Place of ſuch Member ſo diſabled, "to all Intents and Purpoſes, as if ſuch "Member was naturally dead," ſhews that inſtead of their having an Idea that Expulſion *ex Vi Termini* conveyed Incapacity, the

Idea of created Incapacity was by no means familiar to them, and they thought it neceſſary to illuſtrate it by that of a Vacancy made by Death.

So far the Statute Book ſhews the other Parts of the Legiſlature joining with the Houſe of Commons in making Laws for regulating Elections of Members to that Houſe: But Hiſtory informs us the Lords were not always ſo complaiſant, but more than once rejected the Place-Bill, when it had paſſed the Houſe of Commons, tho' a Bill that related merely to the Seats of Members in that Houſe. Had thoſe Houſes thought the Power of creating and declaring Incapacities as inherent in them, as they undoubtedly thought the Exertion of it by the whole Legiſlature expedient in that Caſe, they would not have been ſatisfied with fruitleſsly enacting, ſubject to the Controul of another Body, what they might effectually, and conſtitutionally have ordained by a ſingle independent Reſolution. There cannot ſurely be a ſtronger preſumptive Proof that the Houſe of Commons

mons did not think themſelves at that Time poſſeſſed of ſuch a Power, than their having ſuffered a favourite Regulation to fail by not exerciſing it.

I will now give you an Account of what were ſuppoſed, till this Seſſion, to be the only legal Incapacities to being elected, in the Words of that excellent Conſtitutional *Writer* Doctor Blackſtone; who ſagaciouſly obſerves, Page 166, Vol. I. " If any Alte-" ration might be wiſhed or ſuggeſted in the " preſent Frame of Parliaments, it ſhould be " *in Favour of a more complete Repreſenta-" tion of the People*". That Author ſays (Page 169, Vol. I.), " Our ſecond Point is " the Qualification of Perſons to be elected " Members of the Houſe of Commons. " This depends upon the Law and Cuſ-" tom of Parliament, and the Statutes re-" ferred to in the Margin. And from " theſe it appears, 1. That they muſt not " be Aliens born, or Minors. 2. That " they muſt not be any of the Twelve " Judges, becauſe they [illegible] " Houſe; nor of the [illegible]

" in the Convocation; nor Perſons attaint-
" ed of Treaſon or Felony, for they are
" unfit to ſit any where. 3. That Sheriffs
" of Counties, and Mayors and Bailiffs of
" Boroughs, are not eligible in their re-
" ſpective Juriſdictions, as being returning
" Officers; but that Sheriffs of one Coun-
" ty are eligible to be Knights of another.
" 4. That in Strictneſs all Members ought
" to be Inhabitants of the Places for which
" they are choſen: But this is entirely diſ-
" regarded. 5. That no Perſons concern-
" ed in the Management of any Duties
" or Taxes created ſince 1692, except the
" Commiſſioners of the Treaſury, nor any
" of the Officers following (viz. Commiſ-
" ſioners of Prizes, Tranſports, Sick and
" Wounded, Wine Licences, Navy, and
" Victualling; Secretaries or Receivers of
" Prizes, Comptrollers of the Army Ac-
" counts, Agents for Regiments, Governors
" of Plantations and their Deputies, Offi-
" cers of Minorca or Gibraltar, Offi-
" cers of the Exciſe and Cuſtoms, Clerks
" or Deputies in the ſeveral Offices of the
" Treaſury, Exchequer, Navy, Victualling,
" Admi-

" Admiralty, Pay of the Army or Navy,
" Secretaries of State, Salt, Stamps, Ap-
" peals, Wine Licences, Hackney Coaches,
" Hawkers and Pedlars), nor any Perſons
" that hold any new Office under the
" Crown created ſince 1705, are capable
" of being elected Members. 6. That no
" Perſon having a Penſion under the Crown
" during Pleaſure, or for any Term of
" Years, is capable of being elected. 7.
" That if any Member accepts an Office
" under the Crown, except an Officer in the
" Army or Navy accepting a new Commiſ-
" ſion, his Seat is void; but ſuch Mem-
" ber is capable of being re-elected. 8.
" That all Knights of the Shire ſhall be
" actual Knights, or ſuch notable Eſquires,
" and Gentlemen, as have Eſtates ſufficient
" to be Knights, and by no Means of the
" Degree of Yeomen. This is reduced to
" a ſtill greater Certainty, by ordaining, 9.
" That every Knight of a Shire ſhall have
" a clear Eſtate of Freeho'd or Copyhold to
" the Value of Six Hundred Pounds per Ann.
" and every Citizen and Burgeſs to the Va-
" lue

" lue of Three Hundred Pounds; except " the eldeſt Sons of Peers, and of Perſons " qualified to be Knights of Shires, and ex- " cept the Members for the two Univerſities; " which ſomewhat ballances the Aſcen- " dant which the Boroughs have gained " over the Counties, by obliging the trad- " ing Intereſt to make choice of landed " Men. And of this Qualification the " Member muſt make Oath, and give in " the Particulars in Writing at the Time of " his taking his Seat. *But, ſubject to theſe " Reſtrictions * and Diſqualifications, every " Subject of the Realm is eligible of common " Right.* It was therefore an unconſtitu- " tional Prohibition, which was inſerted " in the King's Writs for the Parliament " holden at Coventry 6 Henry IV. That " no Apprentice or other Man of the " Law ſhould be elected a Knight of the " Shire therein."

* I do not find Expulſion from the Houſe amongſt the Author's Reſtrictions, and much doubt whether he would frequent or wiſh for ſuch an Alteration in Favour of a more complete Repreſentation of the People.

By

By *Common Right*, I ſuppoſe this Author means a Right founded in the Common Law, which Lord Hale ſays, *(Hiſt. Com. Law*, Page 26.*)* cannot be authoritatively altered or changed by Act of Parliament: Yet upon this Occaſion it is to be altered by a Reſolution of the Houſe of Commons, which, we are told, is the Law of Parliament, and that is the Law of the Land (I preſume a Part of the Common Law, for I know of no Law but the Common Law and Statute Law, and this is certainly no Part of the Statute Law). Here we have a Specimen of that Confuſion and Contradiction which muſt ever ariſe from the ſmalleſt Departure from the antient fixed Rules of Law; here we have Common Law in direct Contradiction to Common Law; a Man at once eligible by Common Law, and ineligible by Common Law.

It is not only the Right of the Perſon elected to ſit that is diſputed, but the Right of the Electors to be repreſented by the Man of their Choice, and by him only.

I will

I will, therefore, briefly ſtate to you, from the beſt Authorities, what this Right is, from whence derived, how confirmed, and how reſtrained.

The Knights of the Shires repreſent all the Freeholders of the Counties. Anciently, every the leaſt Freeholder had as much Right to give his Suffrage as the greateſt Owner of Lands in the County. This Right was a Part of his Freehold, and inherent in his Perſon by Reaſon thereof; and to which he had as good a Title as to receive the Profits of his Soil. This appears by the Statute of Hen. VI. Cap. 9, which recites the great Inconveniencies which did ariſe in the Election of Knights of the Shires, by Men that were of ſmall Subſtance, who pretended to have an equal Right with Knights and Eſquires, of the ſame County; therefore that Right was abridged, and confined only to ſuch Perſons as had Forty Shillings per Annum. But thereby it appears, That the Right which a Freeholder hath to vote in the Election

Election for Knights of the Shire, is an original and fundamental Right belonging to him as a Freeholder.

It is certainly a great Advantage for the Men or Inhabitants of a Place to chuſe Perſons to repreſent them in Parliament, who thereby will have an Opportunity, and be under an Obligation to repreſent their Grievances, and advance their Profit. Of this Opinion have two Parliaments been, as appears by two ſeveral Acts; the one, 34th and 35th Hen. VIII. Cap. 13. the other, 25th Car. II. Cap. 9.

The firſt is an Act for making Knights and Burgeſſes within the County and City of Cheſter, which begins in this Manner: "In humble Wiſe ſhew to your Majeſty "the Inhabitants of your Grace's County "Palatine of Cheſter; That they being ex- "cluded and ſeparated from your high "Court of Parliament, to have any Bur- "geſſes within the ſaid Court, by Reaſon "whereof the Inhabitants have hitherto "ſuſtained manifold Loſſes and Damages,

as well in their Lands as Goods and Bodies; therefore it was enacted, That they ſhould have Knights for the County, and Burgeſſes for the City of Cheſter.

The other Act, which conſtitutes Knights and Burgeſſes for the County Palatine and City of Durham, recites, "That the In-"habitants thereof have not hitherto had "the Liberty and Privilege of electing and "ſending Knights and Burgeſſes to the "high Court of Parliament."

The Application of theſe two Acts is very plain. "The firſt ſaith, To be ex-"cluded from ſending Knights and Bur-"geſſes to Parliament, is a Damage to "Lands, Goods and Body." The other ſaith, "That it is a Liberty and Pri-"vilege to ſend them." Thus the Right of Election is explained, and ſhewed to be a legal Right; That of electing Knights of the Shires belonging to, and being inherent in the Freeholder *.

* Lords Caſe of Aſhby and White.

"It

" It is abſurd to ſay the Electors Right of " chuſing is founded upon the Law and Cuſ- " tom of Parliament: *It is an original Right,* " *Part of the Conſtitution of the Kingdom, as* " *much as a Parliament is, and from whence* " *the Perſons elected to ſerve in Parliament do* " *derive their Authority, and can have no* " *other but that which is given them by* " *thoſe that have the original Right to chuſe* " *them**."

" Your Majeſty's Royal Writ commands, " that the ſeveral Electors make Choice of " Perſons to repreſent them in Parliament, " in order to do, and conſent to, ſuch " Things as ſhould be ordained there, " relating to the State and Defence of " the Kingdom and the Church, for which " the Parliament is called: And they obey " the Command, in proceeding to chuſe " Members for the Parliament then ſum- " moned; but neither the Writ which re- " quires them to chuſe, nor the Indenture " by which the Return is made, import

* Lords State of the Caſe of Aſhby and White.

" any Thing whereby it may be inferred, " that the Electors put into the Power of " their Repreſentatives their ſeveral Rights " of Elections, to be diſpoſed of at their " Pleaſure.

" It was an Intereſt veſted in them by " Law before the Election, and which the " Law will preſerve to them to be exer- " ciſed again in the like Manner, when " your Majeſty ſhall be pleaſed to call ano- " ther Parliament *."

" The Right of the Liberties of the " Commons of England conſiſteth chiefly " in three Things: Firſt, that the Shires, " Cities, and Boroughs of England, by Re- " preſentation to be preſent, have FREE " CHOICE of ſuch Perſons as THEY SHALL " PUT IN TRUST to repreſent them §."

" In the high Court of Parliament, all " the whole Body of the Realm, and

* Lords Repreſentation in the Caſe of Aſhby and White.

§ Houſe of Commons Apology to James I.

" every

" every Particular Member thereof, either " in Perſon or by Repreſentation, (upon " their own free Elections) are, by the " Laws of the Realm, deemed to be per- " ſonally preſent *."

" It is enacted, That Elections ſhould " be freely and indifferently made, not- " withſtanding any Prayer or Command- " ment to the contrary, *ſine Prece vel Pretio*, " without any Prayer or Gift, and *ſine Præ- " cepto*, without Commandment of the " King by Writ, or otherwiſe, or of any " other §."

A Right ſo founded can only be controuled by the Supreme Legiſlative Power, or ſome Power in that Caſe equal to the Supreme Legiſlature. The Supporters of this Meaſure aſſert, That a Reſolution of the Houſe of Commons is of that Force.

If this Doctrine is to prevail, That a Reſolution of the Houſe of Commons is the

* 1 Jac. I. Cap. 1.

§ Statute 7 Hen. IV.

Law

Law of the Land in any, even Cafes of Election, it may not be amiſs to ſee what Sort of Law we live under; and I believe it will be found, contrary to the general Opinion, to be the worſt conſtituted and worſt adminiſtered Law in any civilized Country.

In the Caſe of Arthur Hall, the Houſe expelled him, and made him incapable in that and all future Parliaments; he was fined 500 Marks to the Queen, and to be impriſoned ſix Months. The Attorney-General was declared in 1614 incapable to be elected. In 1680, December 30, it was reſolved, *nem. con.* "That no Member of "this Houſe ſhall accept of any Office or "Place of Profit from the Crown without "the Leave of the Houſe, nor *any Promiſe* "*of any ſuch Place* or Office during his be-"ing or continuing a Member of the Houſe. "That all Offenders herein be expelled the "Houſe." All theſe Reſolutions are unrepealed, and conſequently, by this Doctrine, Part of the Law of the Land; ſo that the Attorney-General is actually ſitting in Parliament under

der a Legal Diſqualification; and by the other Reſolution there is now a Vacancy for the County of Middleſex, as I believe Nobody doubts Col. Luttrell having been promiſed the Chiltern Hundreds before he vacated his Seat; and conſequently muſt be incapable, according to thoſe who maintain that Incapacity and Expulſion are inſeparable.

The Powers, of fining to the Crown, of impriſoning for ſix Months, and rendering incapable for all future Parliaments, are no where that I know of formally renounced; and yet I believe Nobody will contend, that they exiſt at preſent in the Houſe of Commons: Yet if any Reſolution of the Houſe is Law, every Reſolution muſt be ſo; Law being fixed, and certain; and the Moment its Power depends upon its Reaſonableneſs, it ceaſes to be Law, and becomes a Counſel.

I believe it will not be difficult to convince every impartial Man, that the late Proceedings

ceedings are upon no Ground leſs entitled to Authority than upon that of Reaſon.

I will readily admit that the Houſe of Commons have, upon many Occaſions, aſſumed to themſelves a Power of declaring, and diſpenſing with the Law: But I muſt add, that whenever they have done ſo, their Reſolutions have been a Diſgrace to the Journals, and a melancholy Proof to what criminal and abſurd Exceſſes a Popular Aſſembly may proceed, when they miſtake Power for Right, and ſubſtitute Will for Law.

To prove this, I will quote ſome Reſolutions of the Houſe aſſuming this Power, the Opinion of Conſtitutional Writers, with that of the other Branches of the whole Legiſlature, upon this pretended Right of one Branch, to declare or enact the Law without the Concurrence of the reſt.

" March 22d, 1641, Reſolved, That when " the Lords and Commons in Parliament " ſhall

" ſhall declare what the Law of the Land is. " To have this not only queſtioned and con- " troverted but contradicted, and a Com- " mand given that it be not obeyed, is a " high Breach of the Privilege of Parlia- " ment."

" Jan. 1648. Reſolved, That the Com- " mons of England in Parliament aſſembled " do declare, That the People are, under " God, the Original of all juſt Power.

" And do alſo declare, That the Com- " mons of England in Parliament aſſembled " being choſen by, and repreſenting the " People, have the ſupreme Power in this " Nation.

" And do alſo declare, That whatſoever " is enacted or declared for Law by the " Commons in Parliament aſſembled, " hath the Force of a Law; and all the " People of this Nation are concluded there- " by, although the Conſent and Concur- " rence of the King or Houſe of Peers be " not had thereunto."

" Feb. 9th, Reſolved, That it hath been
" found by Experience, and that this Houſe
" doth declare, That the Office of a King
" in this Nation, and to have the Power
" thereof in any ſingle Perſon, is unneceſ-
" ſary, burthenſome, and dangerous to the
" Liberty, Safety, and Public Intereſt of the
" People of this Nation; and therefore ought
" to be aboliſhed."

" In 1681 the Houſe of Commons paſſed
" two Votes. One, That the Laws againſt Re-
" cuſants ought not to be executed againſt
" any but thoſe of the Church of Rome.
" The other Vote was, That it was the Opi-
" nion of that Houſe, that the Laws againſt
" Diſſenters ought not to be executed. This
" was thought a great Invaſion of the Le-
" giſlature, when one Houſe pretended to
" ſuſpend the Execution of Laws; which
" was to act like Dictators in the State;
" for they meant that Courts and Juries
" ſhould govern themſelves by the Opi-
" nion that they now gave; which, inſtead
" of being a Kindneſs to the Nonconformiſts,

" raiſed

" raiſed a new Storm againſt them over all " the Nation *.

" There is no Act of Parliament but muſt " have the Conſent of the Lords, the Com- " mons, and the Royal Aſſent of the King. " Whatſoever paſſeth in Parliament by this " Threefold Conſent, hath the Force of " an Act of Parliament.

" The Difference between an Act of " Parliament and an Ordinance of Parlia- " ment is, for that the Ordinance wanteth " the Threefold Conſent, and is ordained " by one or two of them.

" Ordinance in Parliament cannot take " away common Right.

" The Commons petition that the Peti- " tion of the Commons in the fiftieth Year " of Edw. III. whereunto the King's An- " ſwer was, ' The King willeth the ſame " may be made in Acts, for that ſome affirm

* Burnet's Hiſt. of his own Times.

" them to be but Ordinances and not Acts;" " to which the Anſwer was, 'It is in part " done, and the reſt the King will do ac- " cordingly *."

" The Law of the Realm cannot be chang- " ed but by Act of Parliament: *Meritò in* " *Parl. conqueſti ſunt* (the Clergy upon the " making the Act *Articuli Cleri*) *quia Lex* " *Angliæ ſine Parliam. mutari non poteſt* †."

On the Reſtoration of King Charles II. the Commons reſolved, " That this Houſe " doth agree with the Lords, and do own " and declare, That, according to the antient " and fundamental Laws of this Kingdom, " the Government thereof is, and ought to " be, by King, Lords, and Commons."

By the Act of 13 Ch. II. " And becauſe " the Growth and Encreaſe of the late Diſ- " orders did proceed (above all) from a wil- " ful Miſtake of the Supreme and Lawful " Authority, whilſt Men were forward to

* Hale on Par. Page 31 to 34. † Ibid. Page 87.

" cry

" cry up and maintain *thoſe Orders and Or-*
" *dinances to be Acts legal and warrantable,*
" which in themſelves had not the leaſt
" Colour of Law or Juſtice to ſupport them,
" from which Kind of Diſtempers as the pre-
" ſent Age is not yet wholly freed, ſo Poſterity
" may be apt to relapſe into them, if a timely
" Remedy be not provided :—And that no
" Man hereafter may be miſled into any ſediti-
" ous or unquiet Demeanour, out of an Opinion
" that both Houſes of Parliament, or either
" of them, have a Legiſlative Power with-
" out the King; all which Aſſertions have
" been ſeditiouſly maintained by ſome
" Pamphlets lately printed, and daily pro-
" moted by the active Enemies of our Peace
" and Happineſs: Be it therefore Enacted
" by the Authority aforeſaid, If any Perſon
" or Perſons ſhall maliciouſly and adviſedly,
" by Writing, Printing, Preaching, or
" other Speaking, expreſs, publiſh, utter,
" declare, or affirm, That both Houſes of
" Parliament, or either Houſe of Parliament,
" have or hath a Legiſlative Power without
" the King, *or any other Words to the ſame*
" *Effect*, that then every ſuch Perſon and

" Perſons

" Perſons as aforeſaid ſo offending, ſhall " incur the Danger and Penalty of a Pre- " munire."

" It was never yet heard (when there " was a Houſe of Lords in being, and a " King or Queen upon the Throne), that " the Houſe of Commons alone claimed " a Power, by any Declaration of theirs, " to alter the Law, or to reſtrain the Peo- " ple of England from taking the Bene- " fit of it; nor have their Declarations any " ſuch Authority as to oblige Men to ſub- " mit to them at the Peril of their Liberty. " If they have ſuch a Power in any Caſe, " they may apply it to all Caſes as they " pleaſe; for when the Law is no longer " the Meaſure, Will and Pleaſure will be " the only Rule.

" The Certainty of our Laws is that " which makes the chief Felicity of Eng- " liſhmen: But if the Houſe of Commons " can alter the Laws by Declarations, or " (which is the ſame Thing) can deprive " Men of their Liberty, if they go about

" to

" to take the Benefit of them, we ſhall
" have no longer Reaſon to boaſt of that
" Part of our Conſtitution.—Reſolved, that
" neither Houſe of Parliament have Power,
" by any Vote or Declaration, to create to
" themſelves new Privileges not warranted
" by known Law and Cuſtom of Parlia-
" ment *."

" It is God alone who ſubſiſts by him-
" ſelf; the Right of Crowns and King-
" doms, and all other Things exiſt in mu-
" tual Dependence and Relation. The So-
" vereignty, Honours, Lives, Liberties and
" Eſtates of all, are under the Guard of
" the Law, which, when invaded by Fraud,
" or Wit, or deſtroyed by Force, a diſ-
" mal Confuſion quickly veils the Face of
" Heaven, and brings with it horrid Dark-
" neſs, Miſery, and Deſolation; Rapine,
" Plunder, and Cheating, both private and
" public, will be allowed and protected;
" continual Rebellions, unjuſt Proſcrip-
" tions, villainous Accuſations, and Whip-

* Lords Repreſentation in the Caſe of Aſhby and White.

" pings,

" pings, illegal and laſting Impriſonments
" and Confiſcations, diſmal Dungeons, tor-
" menting Racks and Queſtions, arbitrary
" and martial Law, Murders, inhuman
" Aſſaſſinations, and baſe and ſervile Flat-
" teries, multiplied by Revenge, Ambition,
" and inſatiable Avarice, will become the
" Common Law of the Land. All theſe,
" and Myriads more, will be enacted for
" Law, by Force or Fraud. All which
" that wiſe King James well underſtood,
" who ſaith, That not only the Royal
" Prerogative, but the People's Security of
" Lands, Livings, and Privileges, were
" preſerved and maintained by the *ancient*
" *fundamental Laws, Privileges, and Cuſtoms*
" *of this Realm*; and that by the aboliſh-
" ing or altering of them, it was impoſſible
" but that preſent Confuſion will fall upon
" the whole State and Frame of this King-
" dom. And his late Majeſty, of ever-
" bleſſed Memory, was of the ſame Mind
" and Opinion, when he ſaid, The Law
" is the Inheritance of every Subject, and
" the only Security he can have for his
" Life or Eſtate; and which being neg-

" lected

" lected or diſeſteemed *(under what ſpe-*
" *cious Shew whatever)*, a great Meaſure
" of Infelicity, if not an irreparable Con-
" fuſion, muſt, without Doubt, fall upon
" them *."

Having, therefore, proved that a Reſolution of the Houſe of Commons cannot make Law, it follows of Courſe, that a Reſolution of that Houſe can be of no Force which manifeſtly counteracts the Purpoſe of an Act of Parliament; as in this Caſe an arbitrary Power to annihilate the Votes of a Number of Freeholders, would take away the Benefit of the Act fixing the Right of Election, by the laſt Determination of the Houſe, to prevent Uncertainty in the Right of voting. It follows, alſo, that the Rights of the Electors and Elected, being both founded on the Common, and confirmed by the Statute, Law, cannot be affected by a Reſolution of the Houſe of Commons, merely as ſuch. It remains to enquire, Whether ſuch a Reſolution, under any

* Petyt's Miſ. Parl.

particular Circumſtances, can have that Effect?

The firſt Circumſtance in which I ſhall conſider it is, as the Sentence of the Houſe of Commons acting as a Court, and exerciſing their judicial Power over their own Members.

It is agreed on all Hands, that the Houſe of Commons have a Power to puniſh their own Members by impriſoning, ſuſpending, and expelling them. The Deciſions of Courts only bind as a Law upon the Party, as to the particular Caſe in Queſtion; but cannot make a Law, properly ſo called, for That only the King and Parliament can do; therefore the Intereſt of the Electors can by no Means be affected by a Sentence paſſed upon a particular Member.

There is hardly any Power, however preposterous, that has not, at ſome Time or other, been aſſumed by the Houſe of Commons acting as a Court. It is not to

be

be wondered at, therefore, if their Proceedings againſt their own Members, who have been the Objects of momentary Reſentment, or Party Violence, have been ſome Times unjuſtifiable. Whenever, therefore, a Power, which has been claimed or exerciſed upon ſuſpicious Occaſions, has been receded from in cooler Times; it is but fair to look upon the Exerciſe rather as an Uſurpation than a Precedent; becauſe, as Lord Hale * obſerves, "Greater Weight "is to be laid upon the Judgment of any "Court when it is excluſive of its Juriſ- "diction, than upon a Judgment of the "ſame Court in Affirmance of it."

The Houſe has, at Times, claimed the Power of impriſoning for a Time certain, of fining, of declaring incapable for ever, or during a whole Parliament. It is now univerſally admitted that Puniſhments inflicted by the Houſe of Commons determine with the Seſſion, even in Caſes

* Hiſt. of the Common Law, Page 49.

of Contempt of the Court (in which Caſes the Power of all Courts to puniſh is greateſt). Upon this Occaſion, however, it is contended, That the Houſe have a Power of puniſhing a Member by rendering him incapable of being elected during the Remainder of that Parliament.

It appears abſurd at firſt Sight, That the only Caſe in which the Houſe ſhould have a Power beyond the preſent Seſſion, ſhould be in one that muſt laſt for the whole Parliament. When ſuch an Exception is contended for to a general Rule, it is natural to expect that thoſe who contend for it ſhould produce very ſtrong Reaſons for ſuch a Deviation from the eſtabliſhed fundamental Principles. No ſuch Reaſons have been offered, nor do any ſuggeſt themſelves to me, which do not prove too much or too little. If we are to ſuppoſe the Houſe always right in their Judgments, one Parliament is too ſhort a Duration for the Sentence; ſince it muſt be as detrimental to the Community to have an improper Perſon ſit in a future, as in the ſubſiſting Parlia-

Parliament; therefore the Sentence ſhould be for life: But this Power is diſclaimed now, tho' exerciſed in Mr. Hall's Caſe. If, on the other Hand, we are to ſuppoſe the Houſe may be miſtaken in an haſty Vote, the whole Parliament is too long a Time for the Culprit to ſuffer.

There is another very ſtriking Objection to this Period of the Remainder of the Parliament. It is impoſſible that in a well ordered Government Puniſhments ſhould be fortuitous, tho' they may be diſcretionary. Can it be ſuppoſed that a Crime committed upon the Eve of a Diſſolution of the Parliament ſhould be ſufficiently puniſhed by a few Days Excluſion; which being committed a few Weeks later, would have deſerved a ſeven Years Puniſhment? I can hardly ſuppoſe ſo abſurd an Idea, as that the Effect of the Sentence ſhould ceaſe with the Exiſtence of the Judges.——Till the preſent Reign, the Twelve Judges were only for the Life of the King; but I never heard that it was ſuppoſed that the Decrees of thoſe Judges loſt their Force, upon the Demiſe

miſe of the Crown; nor do the Judgments of the Houſe, *founded upon Law*, as in the Caſe of determining who have the Right of voting in Elections, loſe their Force in ſubſequent Parliaments.—Every Argument, therefore, for a longer Puniſhment than during the Seſſion, holds more ſtrongly for a perpetual Excluſion; and every Argument againſt a perpetual Excluſion, proves ſtrongly the Neceſſity of reſtraining this Power of depriving the Member of his Seat to the ſubſiſting Seſſion: I ſay, depriving the Member of his Seat, becauſe the Houſe have undoubtedly a Power by Commitment or Suſpenſion to prevent his exerciſing his Privilege as a Member; but I deny their Right to render him incapable of being elected, as that would affect the Rights of the Electors to ſend whom they pleaſe to repreſent them; which cannot be done obliquely by a Sentence of Condemnation, to which they are not Parties. The only Power the Houſe has, is to ſend the Perſon back to them for their Approbation or Rejection.

I am

I am aware that thoſe Precedents will, at firſt Sight, ſeem to contradict this, which declare a Member to be diſabled either from ſitting in any future Parliament, or in the preſent Parliament: But (without inſiſting too much upon the Ambiguity of the latter Phraſe, which may only mean for the Remainder of the Seſſion, *for every Seſſion of Parliament is in Law a ſeveral Parliament* *, I ſhall anſwer that by obſerving, That the Houſe only declared their Opinion of the Degree of Unworthineſs in the Member expelled; and had the People never exerciſed their Right of ſending back again the Man ſo reprobated, it would only have proved, that they were in ſome Inſtances induced by the Juſtice of the Sentence not to exerciſe, and in others deterred by the Violence of the Times, from claiming their Right; but it would by no means have followed, that they were not poſſeſſed of that Right.

But the Precedents of Parliament furniſh us with Proofs of the contrary. It ap-

* Hale on Parliaments, Page 38.

pears

pears by Mr. Hall's fourth Caſe, that the Burgeſſes of Grantham petitioned the Houſe, by Mr Markham, againſt Mr. Hall; ſetting forth, amongſt other Things, " That, not-" withſtanding he had in *ſome* of the former " Parliaments, in which he had been re-" turned a Burgeſs for the ſaid Borough, " been for certain Cauſes the Houſe then " moving, diſabled for ever afterwards to " be any Member of this Houſe at all, " hath of late brought a Writ againſt the " ſaid Inhabitants for Wages, &c." The Houſe afterwards appointed a ſelect Committee to inquire into it, who did not declare that Mr. Hall had no Right to the Wages, becauſe he had been declared incapable (which was the Fact) previous to one of thoſe Parliaments, but they *deſired* him to remit thoſe Wages; " and they found him *very conſor-*" *mable to condeſcend to ſuch Requeſt.* And " he further alledged, and affirmed to them, " he would have remitted the ſame, had the " Burgeſſes made Suit to him ſo to do; and that " he was very willing to do what was agree-" able to the Houſe. *Which being well liked*

" *of*

" *of by the Houſe*, it was ordered to be en-
" tered accordingly."

Here is no Appearance of Compulſion; on the contrary, a plain Proof that he was entitled to all the Privileges and Rights of a Member by the Election of the People, notwithſtanding the Incapacity *previouſly* declared by the Houſe.

Sir William Pennyman and Mr. Holborne were both expelled Auguſt 11, 1642, and diſabled; and yet appear both, by the Journals, to have ſat afterwards; tho' the Returns of the Writs do not appear.

The Caſe of Mr. Glyn appears ſtill ſtronger in Favour of the Rights of the Electors.—" June 7th, 1648, A Petition pre-
" ferred, ſtiled the Humble Petition of the
" Burgeſſes, Aſſiſtants, Gentry, and others,
" Inhabitants of the City of Weſtminſter;
" the which was read; and was to deſire,
" That John Glyn, Eſq; whom they had
" elected for their Burgeſs, might be ad-
" mitted to his former Liberty to ſit and ſerve
" as a Member of this Houſe.—Reſolved,

" That the Order 7 Sept. 1647, for dif-
" charging John Glyn, Eſq; Recorder of
" the City of London, from being a Member
" of this Houſe, be, and is hereby re-
" voked."

No Objection can lay againſt Precedents drawn from theſe Times: I quote them againſt unreaſonable Claims of the Houſe of Commons, as I would an Act of Hen. VIIIth. or James Iſt againſt the Prerogative: It is plain therefore, that Precedent does not authorize this Doctrine.

The Advocates for this Meaſure have recourſe to an Aſſertion, which, could it be proved juſt, would have more Weight than all the Precedents, ſuppoſing them uncontradicted, that Induſtry could glean, or Party Violence furniſh from the Journals. They aſſert, That it is impoſſible the Houſe ſhould exiſt, unleſs poſſeſſed of ſuch a Power.

I readily admit that the People, when they chuſe their Repreſentatives, by that Choice inveſt them with every Power over their

their Liberties that can be neceſſary for the Diſcharge of their Truſt; but I, at the ſame Time, aſſume, That the Repreſentative Body can neither by Uſurpation or Cuſtom acquire any Powers over the Rights, which are not abſolutely neceſſary for the Welfare of the People; for whoſe Uſe, and in whoſe Right alone, are they poſſeſſed of any Powers or Privileges.

The Privileges of the Houſe of Commons are like the Shell of the Tortoiſe, to prevent them from being cruſhed by the Weight of higher Powers; not like the Strength of the Lion, to enable them to deſtroy thoſe who are helpleſs. "That certainly can never "be eſteemed a Privilege of Parliament, "that is incompatible with the Rights of the "People."

To ſee, therefore, whether the Houſe is poſſeſſed of a Privilege, it is neceſſary to enquire on the one Hand, what is the poſſible Inconvenience to be guarded againſt, and what is the Degree of *legal Probability* that it ſhould happen; and on the other Hand, how far the Remedy propoſed will be effectual for

the Purpoſes intended, and what are the bad Conſequences to be apprehended from it.

The Privilege contended for, in this Caſe, is, a Power in the Houſe of Commons to declare by a ſingle Vote a Member, legally qualified in all other Reſpects, incapable of being re-elected in that Parliament. The Evil complained of, and for which this is the ſuppoſed Remedy, is the Poſſibility of a Perſon unworthy of a Seat in the Houſe of Commons, ſitting there by the Choice of the Electors; which, it is ſaid, would be a Degradation of that Aſſembly, and of dangerous Conſequence to the Conſtitution. This Evil ſeems, however, to be already ſufficiently guarded againſt. The undoubted Power of the Houſe of Commons to expel a Member for any Crime notorious before his Election, and thereby ſend him back to his Conſtituents for their Approbation or Rejection, ſecures the Electors from thoſe Inconveniences which might ariſe from the Continuance of a Member whom they may in the firſt Inſtance have inadvertently choſen, without being deprived of the Right of

again

again employing him *, if his Crimes ſhall not appear to them to be ſuch, as render him unfit for their Service, or unworthy of their Confidence.

The Laws fixing the Qualifications of Electors prevent any Perſons who have not an Intereſt in the Conduct, from having a Voice in the Appointment of a Member. The Laws preventing Minors, Idiots, and Lunatics, from voting, deprive thoſe of the Exerciſe of their Right, who are not capable of judging of their Intereſt.

The neceſſary Qualifications of Perſons to be elected, have, in the Eye of the Law, rendered the Choice of an improper Perſon improbable. Under all theſe Precautions it is to be preſumed, the People may with Safety be truſted with the free Exerciſe, upon an Expulſion, of that Right which the fundamental Principles of the Conſtitution have veſted in them. Could

* The Caſe of Members whoſe Seats are vacated by the Acceptance of Places, is ſomewhat ſimilar to this.

we, however, for a Moment ſuppoſe them, contrary to all Probability, wilfully to perſiſt, againſt their known Intereſt, in intruſting the Care of their moſt valuable Privileges to a Man who had proved himſelf unworthy of their Confidence; it might follow, that People ſo infatuated ought not to have a Power of ſending any Repreſentative; but no Concluſion can be drawn from thence, that other People ſhould appoint their Delegate for them; nor any Suppoſition formed, that if they were by this new Privilege prevented from returning the old Member, they would ſubſtitute a more worthy one in his Place.

The Inconveniences that might ariſe from an Abuſe of this Power are obvious: A prevailing Party might, by an haſty Vote, exclude the moſt worthy Member, for no other Reaſon than his being obnoxious to a bad Miniſtry; nay, if it once came to be the eſtabliſhed Law of Parliament, that a ſingle Vote of that Houſe could incapacitate a Member; Forty Members might, in one Day, deprive the People irretrievably for ſeven Years of the

Services

Services of the moſt able Men. Hiſtory and Experience juſtify the Apprehenſion, by ſhewing us that Fifty Members were expelled in one Day.

But, without recurring to the Suppoſition of intended Injuſtice, it is poſſible that the Houſe may be miſtaken in a ſingle Vote. This the Law preſumes may happen, and has actually guarded againſt, by making it neceſſary, that whatever is to have the Force of Law ſhould thrice receive the Approbation of each Houſe, and the Royal Aſſent afterwards; the Laws of this Country being, as Mr. Waller juſtly expreſſes it, like Gold ſeven Times tried. It is plain therefore, that neither Reaſon nor Precedent authorize the Exerciſe of ſuch a Power in the Houſe of Commons ſitting as Judges upon their own Members.

The only remaining Circumſtance under which I am to conſider a Reſolution of the Houſe of Commons is, in the Exerciſe of their Power to judge of Election Cauſes; which brings me to the Determination of the Houſe on the 8th of May.

The

The Declaration on the 14th of April, I can by no Means look upon in any other Light than that of an extra-judicial Reſolution, and, as ſuch, already proved of no Force; with this Difference only from any Thing hitherto obſerved, That Mr. Wilkes's Election having been previouſly declared void, the only Queſtion was, Whether the Houſe ſhould nominate the Perſon who had the Minority of Votes, or direct the County of Middleſex to proceed to another Election? The Cauſe was, however, taken up precipitately upon the Suggeſtion of one of the Judges, at the Requeſt of neither of the Parties, without any Council being heard, and without the Knowledge of one of them; with ſuch avowed Secrecy, that, though an Accident prevented the Motion being made the Day it was intended, no Intreaties could prevail upon the Mover to communicate the Purport of it. To treat this therefore as a judicial Deciſion, would be to offer the higheſt Affront to a free Aſſembly, in which timely Notice, and a fair Hearing of both Parties, have hitherto ever been, and I truſt will ever remain, eſſential

tial Circumſtances in their judicial Proceedings.

Much Pains have been taken upon this Occaſion, by the Advocates for this Meaſure, to prove what never has been diſputed by its Opponents; The Power of the Houſe of Commons to determine in all Caſes of Election without Appeal. It is the Abuſe, and not the Exerciſe, of this Power that is complained of; not, that the Conſtitution has veſted in them the Power of judging according to Law; but, that they have aſſumed to themſelves a Power incompatible with the Idea of a Court of Juſtice; That of making the Law firſt, by which they are afterwards to judge, and thereby adding the Power of the Legiſlature, which is *Jus dare*, to that of the Judge, which is *Jus dicere*.

The Power of the Houſe of Commons is that of a Court of Appeal from the returning Officer. All Courts of Appeal ought to judge by the ſame Law as the Courts from which the Appeal is brought.

It was allowed, indeed, that the Sheriffs had not acted amiss upon this Occasion, by keeping their Oaths, and conforming to the Directions of the Acts of Parliament: But it was said, the Resolutions of the House, whatever they might be elsewhere, were certainly Law within those Walls; therefore, though the Sheriffs ought, by the Law of the Land, to return Mr. Wilkes upon a Majority, We, by the Law of Parliament, ought to seat Mr. Luttrell upon a Minority.

Such were the Arguments that were gravely used by very respectable Authorities of the Law, in Support of this Question. Nobody doubts that the Law of England is Law in the House of Lords; yet if *that* House were to judge a Cause upon an Appeal from the Court of Session by *that* Law, in a Point where it differs from the Law of Scotland, Every-body would, I believe, doubt the Equity, though Nobody could the Efficacy, of the Decision.

Inferior

Inferior Courts having Judicature, and abuſing it, are amenable to, and may be puniſhed by, Parliament. There is no Controul over the Commons, if they judge wrong in Caſes of Election; as among the Antients there was no Puniſhment for Parricide, not becauſe it was no Crime, but becauſe their Legiſlators thought it impoſſible the Offspring ſhould deſtroy the Parent from whom it derived its Exiſtence. To ſuppoſe an Houſe of Commons ſo conſtituted as to be adverſe to the People, is to ſuppoſe Something unnatural: which, did it for a Moment exiſt, ſhould, like all other Monſters, be ſtifled at its Birth, leſt it ſhould grow up a Diſgrace to its Nature, and a Curſe to its Parent.

I have troubled you with this minute Diſcuſſion of every poſſible Pretence to this Right, becauſe I thought it neceſſary to ſet this Tranſaction in its true Light, to ſhew that the Arguments uſed in Favour of the Queſtion were the Language of Deceit not Error, and to prove that a Claim of the

greateſt Importance, and the firſt Impreſſion, was not even founded upon an Abuſe of Right, or Perverſion of Law, and was, to the Honour of our Conſtitution, as unexampled as unreaſonable. The Houſe of Commons has, 'tis true, in former Times, been engaged in Diſputes upon their Powers in Election-Matters with the other Branches of the Legiſlature, as in the Caſe of Sir Francis Goodwin, and that of Aſhby and White: But it remained for the Policy of the preſent Times, and the Ingenuity of the preſent Miniſters, to create a Diſpute between the Collective and Repreſentative Body, by ſetting the Privileges in Oppoſition to the Rights of the People.

I am not to learn, that where the People have a Right to ſubſtantial Juſtice, they will not be ſatisfied with the Quirks of Law, or the Sophiſtry of Order. However ſucceſsfully theſe may formerly have been employed, from the Mouth of a Miniſter, to palliate the venal Vote to the callous Conſcience of a bribed Senator, they will never

never perſuade a free and enlightened People, that the Rights which they have reſerved, can be deſtroyed by the Privileges which they have granted. They will watch every Invaſion of the Right of Election with a jealous Eye; Forms and Precedents will have little Weight with them, if they will inveſtigate the Point upon general and conſtitutional Principles. Theſe will convince them, that Laws, which are intended for the Security, can never operate to the Deſtruction, of their moſt valuable Rights. They will ſee that it is impoſſible a Freeholder, who is but one Degree removed from a Legiſlator, ſhould loſe his Rights by any Thing but the Act of the whole Legiſlature.

Reaſon, as well as SIDNEY, will tell them, That as the People's Delegates, or Repreſentatives in Parliament, do not meet there by a Power derived from Kings, but from thoſe that chuſe them; ſo they who delegate Power do always retain to themſelves more than they give; and, therefore, the People

People do not give their Delegates an abſolute Power of doing what they pleaſe, but do always retain to themſelves more than they confer on their Deputies, who muſt, therefore, be accountable to their Principals.

They will ſee, that the very Point upon which this Claim reſts, the Power of the Houſe of Commons, furniſhes the ſtrongeſt Argument againſt it. The greater and more important the Power to be delegated is, the more neceſſary is it that the Right of the People in Delegating that Power ſhould be free and unreſtrained. If there is an Aſſembly which is to have the abſolute Diſpoſal of the Lives, Liberties, and Fortunes of the Whole; ſurely it is but reaſonable that every Part ſhould have full Power to intruſt the Care of their Intereſts in *that* Aſſembly to Thoſe, and Thoſe only, whom they think moſt likely to diſcharge that Truſt with Integrity and Ability, ſubject to no ſubſequent Controul. This is abſolutely neceſſary to form a free Repreſentation for the Security

of

of the Parts, and can by no means be attended with any Inconvenience to the Whole; as the Repreſentative ſo appointed is not veſted with an independent negative Power, but is bound, as well as his Conſtituents, by the Determination of the Majority.——Such a People will guard with Temper and Firmneſs what they have watched with Vigilance; they will be careful that Nothing unjuſtifiable in the Mode ſhall defeat the Ends, or diſgrace the Motives of their Oppoſition.

The late Determination was certainly the *Act* of the Houſe of Commons, becauſe whatever is determined by a Majority of Members preſent, above forty, is deemed ſo by the Conſtitution of Parliament; but many Circumſtances lead me to doubt, whether it can really be thought the Opinion of the Repreſentative Body of the People. It was carried thro' upon the laſt Day of a protracted Seſſion, after it had been determined in a thin Houſe, that there ſhould not be a full one, by the (till then, I believe, unprecedented)

cedented) Refuſal of a Call of the Houſe, upon a Diviſion of 94 to 49 : I cannot help therefore lamenting, in the Style of Col. Luttrell's Advertiſement, " that 221 ſo cir-" cumſtanced, not being the Majority of " 558, ſhould arrogate to themſelves the " Right of pronouncing the comprehenſive " Senſe of the whole People of England."

An Houſe of Commons *may* indeed act wrong, by conforming to the Prejudices of People ; and the Conſtitution has guarded againſt any Inconveniences attending ſo juſtifiable a Miſtake, by the Negative which the other Branches of the Legiſlature have upon the Proceedings of that Aſſembly. But that Houſe of Commons *muſt* act wrong, which acts in notorious Oppoſition to the Sentiments of the People who ſent them. The contrary Notion, ſhould it prevail, would be fatal to the Exiſtence of the Democratical Part of our Conſtitution, by ſubſtituting in its Place a ſecond independent ariſtocratical Branch, not like the firſt, founded in the Right of Hereditary Succeſſion,

ſion, or Royal Favour, but the Offspring of caſual Wealth, and occaſional Corruption. Such a Notion ſuppoſes an Unpopular Popular Aſſembly; a Repreſentative Body not Repreſenting.—It is in vain to attempt deſcribing the Effects of this Doctrine; the Horror of the Idea is loſt in the Abſurdity of the Expreſſion.

The preſent Situation of our Liberties is truly critical; they are, indeed, in imminent Danger, but not irretrievably loſt: A firm, vigorous, and immediate Exertion of the ſtill unqueſtioned Rights of the People, will reſtore the Conſtitution to its priſtine Vigour. The voice of the Collective Body muſt, and ought to have the moſt effectual Weight with the Elected Body. Should the People in general expreſs their Diſſatisfaction at the late Proceedings; whether their Complaints ſhould reach the Ears of their Repreſentatives by the old Conſtitutional Method of Inſtructions, or by the means of Private Converſation during the Receſs*, I do not

* It is the Law and Cuſtom of Parliament, That when any new Device is moved on the King's Behalf

doubt that the preſent uncorrupt Houſe of Commons will *remember their Creator in the days of their Youth*; that they will know that it is their Duty to expreſs, not controul, the Sentiments of the People.

Thoſe who think their Conduct in Parliament ſhould be ſwayed by Reaſon, will find ſufficient Arguments to induce them to reſcind the Reſolution; nor are Precedents wanting, (where the Houſe of Commons have undone in Caſes affecting the Rights of the People, in one Seſſion, what they had done before) to guide thoſe who prefer Example to Reaſon.

Should the People prefer the Exerciſe of that Right which the Nature of the Con-

In Parliament, for his Aid or the like, the Commons may anſwer, "That they tender the King's Eſtate, and are ready to aid the ſame; only in this Device *they dare not agree*, without Conference with their Counties: whereby it appeareth, that ſuch Conference is warrantable by the Law and Cuſtom of Parliament." *Lex Parliam.*

ſtitution

ſtitution has reſerved to them *, of appealing to the Wiſdom and Juſtice of the Supreme Power, by reſpectfully carrying their Complaints to the Foot of the Throne; it is not to be doubted that they would obtain the fulleſt Redreſs from Him, who is truly the Father of his People. In ſhort, any vigorous Step *warranted by the Conſtitution*, cannot fail of rendering ſuch Doctrines as, *That the People, by giving their Votes at an Election for one Man, have choſen another*, and, *That becauſe the Law declares him to be duly elected who has the Majority of legal Votes, therefore the Perſon who has the Minority ought to ſit*, rather ridiculous in the Eyes of Poſterity from their Abſurdity, than odious from their Conſequences.

* "Reſolved, That the Houſe do agree with the Committee in the ſaid Reſolution, ſo amended, That it is the UNDOUBTED RIGHT of the People of England to petition or addreſs to the King for the Calling, Sitting, or DISSOLVING Parliaments; and for the REDRESSING OF GRIEVANCES." *Journals of the Commons, Feb.* 26, 1701.

Nothing can be fatal to the Liberties of the People but their own Inactivity. Should they in this firſt Inſtance ſubmit, without Complaint, to the Exerciſe of this new-claimed Power, ſuch a Silence will imply their Conſent, and this Reſolution will become, by ſuch *Conſent* *, the Law of the Land.

The ſacred Right of Free Election, founded in the very Principles of the Conſtitution, confirmed by the Wiſdom of Ages and the Blood of Thouſands, may by the Negligence of a Moment be loſt for ever! It behoves them to remember, before it be too late, that excellent Obſervation of a former Parliament, in their Apology to one of our Kings, " The " Privileges of Subjects are, for the moſt

* It (the Cuſtom) muſt have been peaceable, and acquieſced in; not ſubject to Contention and Diſpute. For as Cuſtoms owe their Original to common Conſent, their being immemorially diſputed, either at Law or *otherwiſe*, is a Proof that ſuch Conſent is wanting. *Blackſtone's Commentaries.*

" Part,

" Part, at an everlaſting Stand. They " may, by good Providence and Care, be " preſerved, but being once loſt are not " recovered but with much Diſquiet."

I ſhall make no Apology for having troubled you with ſo long a Letter upon ſo important and intereſting an Occaſion; which I flatter myſelf you will rather look upon as a Duty than an Intruſion. I think, with Doctor Blackſtone, that " Every " Member's Conduct is ſubject to the fu- " ture Cenſure of his Conſtituents, and, " therefore, ſhould be openly ſubmitted to " their Inſpection." I ſhould have been aſhamed, upon any future Occaſion, to ſolicit you for the Renewal of ſo important a Truſt as the Care of your Liberties in Parliament, could there have been the ſmalleſt Doubt of their having ſuffered by my Negligence or Connivance. I have thought it my Duty, not only to give an Account of my own Conduct, but to ſtate to you, at large, the Danger your Rights are expoſed to, and to ſuggeſt to

you

you the only conſtitutional Means of Redreſs ſtill in your Power.

I will conclude by aſſuring you, that my Conduct in Parliament has been influenced by no Motive but a ſincere Zeal for the Welfare of my Country; and that I have conſtantly had in View that excellent Obſervation with which Doctor Blackſtone concludes his Commentaries: "The Pro-"tection of THE LIBERTY OF BRITAIN "is a Duty which they (ſuch Gentlemen "of the Kingdom as are delegated by "their Country to Parliament) owe to "themſelves, who enjoy it; to their An-"ceſtors, who tranſmitted it down; and to "their Poſterity, who will claim at their "Hands this, the beſt Birth-Right, and "nobleſt Inheritance, of Mankind."

I am,

SIR,

Yours, &c.

POSTSCRIPT.

THOUGH I flatter myſelf you will find every Appearance of Argument on the Miniſterial Side refuted in my Letter, yet, as a Performance has appeared, under the title of *The Caſe of the late Election for the County of Middleſex conſidered, on the Principles of the Conſtitution and the Authorities of Law*, which ſeems to be their grand Battery, and is ſaid to be the Work of their chief Engineer; I could not let it paſs without ſome Obſervations upon the moſt ſtriking Parts. The Author ſets out with declaring himſelf the Champion of *a prudent Adminiſtration*, which is not *inattentive* to *popular Clamour*. Whether the People will take this Gentleman's bare Aſſertion againſt the *conſiſtent* Conduct of Adminiſtration, upon thoſe two Points, Time muſt diſcover. He undertakes the arduous Taſk of making the People *renounce their Opinions* (which are, according to him, *founded on the miſguided Impetuoſity of public Prejudice*); *and to turn their Reſentment againſt thoſe who have deceived and miſled them.* "To this End, he pro-
" poſes to ſhew, from the Records of Parliament and the Au-
" thorities of Law, that the Houſe of Commons is legally
" inveſted with the Power which they have exerciſed with Re-
" ſpect to the late Determination of the Election for Middleſex."
" Farther, that, on the general Principles of Reaſon and con-
" ſtitutional Policy, they ought to have ſuch a Power: And that,
" in the Inſtance in Queſtion, they have exerciſed their Power
" in a juſt and conſtitutional Manner; not only according to
" the Law and Uſage of Parliaments, but in ſtrict Conformity
" with the Adjudications in the Courts of Weſtminſter on ſimilar
" Occaſions." It muſt be confeſſed, that he has not miſtaken the Means; it remains to enquire whether he is poſſeſſed of the Materials.

The Author (page 6.) ſays, "The Law of Parliament may
" be conſidered as compoſed of two Branches; 1. The Rules,
" Orders, Cuſtoms, and Courſe of the Houſe, with their Expo-
" ſitions of and Deciſions upon the Law, with Reſpect to Matters
" within their Juriſdiction. The Cuſtoms, Courſe, and com-
" mon judicial Proceedings of a Court are the Law of the
" Court, of which the common Law takes Notice, without
" alledging or pleading any Uſage or Preſcription to warrant

" them." The Author will not, I ſuppoſe, deny, that the Perſon having the Majority of legal Votes is, *by the Cuſtom of Parliament*, duly elected. He contends, however, that, *by the Cuſtom of Parliament*, the Perſon who *has not* the Majority of legal Votes ought to ſit. I ſhould be glad to know how he will reconcile this Doctrine to that formerly laid down by his Ally Dr. Blackſtone. " Cuſtoms muſt be conſiſtent " with each other: One Cuſtom cannot be ſet up in Oppoſition " to another; for if both are really Cuſtoms, then both are of " equal Antiquity, and both eſtabliſhed by mutual Conſent; " which to ſay of contradictory Cuſtoms is abſurd."

The Author then proceeds to prove, what nobody doubts or has diſputed, " That the Houſe of Commons have the ſole and " excluſive Power of puniſhing their own Members, *as ſuch*; " either by Commitment, Suſpenſion, Expulſion, *or otherwiſe*." What this Gentleman means by this Expreſſion, it is too vague for me to determine; nor do I know of any other Powers than thoſe he ſpecifies, except Reprimand. To prove this, he refers the Reader to a pompous Note, full of Precedents, with proper Italics, to mark the Application of the Caſe of Mr. Steele, the Champion of the Hanover Succeſſion, to that of Mr. Wilkes.

In page 9. we are told, " The *neceſſary* Conſequence of " Expulſion is, that the Perſon expelled ſhall be incapable " of being elected again to ſerve in the ſame Houſe of Com- " mons that expelled him. This Incapacity is implied in the " very Meaning of the Word itſelf. Should any Man of plain " Senſe, nay, ſhould any young Academician, or School-Boy, " even be aſked what is underſtood by expelling a Man from " any Society, they would certainly anſwer, The Meaning is, " that he ſhall never be a Member of *that* Club, or of *that* Col- " lege, or of *that* School, any more." I will not diſpute with the Author upon the Nature of Club-Expulſions, as I am ſenſible he has an Opportunity of knowing their Extent from the beſt Authority *. He has, however, forgot one material Circumſtance attending the Caſes which he has quoted, which is, that *the Perſons* who expel are *thoſe* who have the Power of electing; and *any young Academician (Chancellor of a Univerſity), or even School-Boy*, will tell him, that they do not deprive themſelves of their Right to receive again the Scholar, though it is not probable they will exerciſe it. In the next paragraph we are told, " Expulſion clearly, *ex Vi Termini*, ſignifies a total, " and not a partial Excluſion from the Society or Parliament " from whence he is removed. If a Member is excluded during " Pleaſure, or for a certain Time only, that is, properly ſpeak- " ing, a SUSPENSION, and not an EXPULSION." The Fallacy of this Argument might be detected by the Author's School-Boy, who would certainly tell him, that a Member *ſuſpended* never

* Vide the Jockey-Club Proceedings in Brereton's Caſe, ſigned by the Duke of Grafton.

ceaſes

ceaſes to be a Member, and is entitled to his Seat again without a Re-election; and that a Member *expelled* does ceaſe to be a Member, and is not entitled to any Seat without a freſh Election.

The Author tells us, "To admit the Right of expelling, "and argue that the Member expelled may be re-elected that "Parliament, is to contend for the greateſt Abſurdity imagin-"able: It would expoſe the Houſe of Commons to the moſt "flagrant Inſult and Contempt; it would render the Determi-"nation of the Houſe of Commons totally nugatory, if the "Member whom they expelled To-day ſhould be forced upon "them again To-morrow." The Crown has the ſame Power to diſſolve (or, if I may be allowed the Expreſſion, to expel) the whole Houſe, that the Houſe has to expel one Member: a Power lodged in the Crown, not to be wantonly exerciſed, but for the wiſeſt Purpoſes, from a Preſumption of Law, that the King, who can do no wrong, will only exert it to prevent "un-"fit and unworthy Repreſentatives ſitting in Parliament, to the "Diſgrace and Detriment of the Nation." Will this Gentleman ſay, that the Crown is expoſed "to the moſt flagrant Inſults "and Contempt," and its Power "rendered totally nugatory," becauſe the Parliament it has diſſolved "To-day may be forced upon it again To-morrow?" The Fact is, theſe Powers are exactly ſimilar, equally neceſſary, and granted for the ſame Purpoſes. An imprudent Surrender of one of theſe Powers to the Long Parliament coſt the King his Head, and occaſioned the Subverſion of the Conſtitution; an unwarrantable Stretch of the other may force the People to call upon the Crown for the Exertion of that Prerogative, which can alone deprive thoſe of the Power who have forfeited the Eſteem and Confidence of the People. The Houſe of Commons may expel; the King may diſſolve; but in both Caſes it is the People alone that muſt chuſe their Repreſentative, whilſt the Conſtitution remains upon its original Foundation.

Page 11 the Author puts an extraordinary Queſtion: "Shall "*they* be at Liberty to reſtore him, who had no Power to expel "him?" This Queſtion is juſt as applicable to the Caſe of a whole Parliament upon a Diſſolution, as to that of a ſingle Member upon an Expulſion, the People having as little Power to diſſolve as to expel. Let me aſk him, however, what he thinks of his own Queſtion nearly inverted: Shall *they* be at Liberty to exclude him who have no Power to elect him? "*Certainly not.*"

He next ſuppoſes, for the Sake of Argument, that the People met in their Collective, and not Repreſentative Body; and aſks if they would not have a Right to exclude any one Perſon from that Society? Undoubtedly they would; and by ſuch Excluſion the original Compact would be diſſolved as to that Perſon; who being deprived of the Benefits, would be diſcharged from the Burthens of the Society. If, therefore, this could prove

any thing in the preſent Caſe, it would prove that the Freeholders of Middleſex being, in the Perſon of their Repreſentative, excluded from the Houſe of Commons, are not bound by its Authority. It muſt be confeſſed that this Author is as unfortunate when he attempts to reaſon, as I ſhall prove him to be when he *pretends* to quote. In the next Page we find the moſt bareſaced Attempt to impoſe a falſe Quotation upon the Public, in the Caſe of Mr Walpole, by omitting the Words "committed "a Priſoner to the Tower of London," and "for a high Breach "of Truſt in the Execution of his Office, and notorious Corrup-"tion when Secretary at War." I call it a bare-faced Attempt to impoſe upon the Public, becauſe it is plain that this Gentleman, by pompouſly putting *Reſolved* in Capitals at the Head of it, and marking the whole as a Quotation, without any Break to ſhew the Omiſſions, meant that it ſhould paſs for a fair and full Extract from the Journals. I only mention this as a Specimen of miniſterial Candour *without Doors*. In Fact, either Way it would not be material to the main Point; though the true State of the Queſtion would have been fatal to this Writer's Argument, who had Senſe to diſcern, though not Ingenuity to confeſs, that the Houſe meant to declare that Incapacity was the Effect of Breach of official Truſt and notorious Corruption, and as ſuch the Concomitant, and not the Conſequence of Expulſion.

Having ſeen how the Author proceeds when he wants to wreſt an inapplicable Precedent to his Purpoſe, we ſhall next ſee his Manner of getting rid of one that is directly againſt him. He undertakes to prove, that Incapacity has been the conſtant Effect of Expulſion; but in his Way, he unfortunately ſtumbles upon the Caſe of Mr. Wroxlaſton; in which the Houſe uſed the word Expelled *(ſtruck out manuſcript)* * indeed, if you will believe him) to expreſs a *contrary Action*. If the Precedents of Parliament are to be the Law of the Land, this Writer muſt excuſe us if we take them as they are to be found upon the Journals, without any Regard to either the Corrections or Spoliations of an anonymous Commentator. Indeed, it will be only neceſſary to refer him to the preceding Page of his own Pamphlet to convince him, that "Nothing can "be more abſurd than to urge an Opinion from *Inference* only, "contrary to that which is declared in *expreſs* Words." However, for the Sake of Argument, we will for a Moment admit

* This *Inaccuracy* was, however, by no Means confined either to that Caſe, or the Parliament. We find another Houſe of Commons, Feb. 10, 1696, reſolving, That Sir Henry Furneſs, having ſince his being elected a Member of this Parliament, accepted a Place, is elected contrary to the Act of the 6th and 7th of W. and M. (the very Act Mr. Wroxlaſton's Offence came under.) And it was alſo reſolved, That the ſaid Sir Henry Furneſs be, for the Breach of the ſaid Act, expelled the Houſe. By which it appears, that in two Parliaments, at leaſt, *to expel* meant *to vacate*, and not *to expel*.

that

that the Expreſſion was *ſomewhat inaccurate*. This very *Inaccuracy* is all that is contended for on our Part. The Author undertakes to prove, that "Expulſion, *ex Vi Termini*, ſignifies a total, and "not a partial Excluſion;" and, in the Courſe of his Proof, he is obliged to aſſert, that the Houſe of Commons, in the Year 1698 (no very ignorant Time), were not accurate in confining the Word to that Signification. Will he perſiſt in contending, that ſo important a Right as that of Election is to be regulated by a Law, ſubject to ſo groſs an *Inaccuracy* as to *expreſs* the very Reverſe of what it *means*?

The Author ſpends eighteen Pages in proving, that "They "have the ſole and excluſive Power of examining and determining the Rights and Qualifications of Electors and Elected, "together with the Returns of Writs, and all Matters incidental to Elections." This Nobody diſputes. I cannot, however, agree with him, that "It is by their Reſolutions, "only, that Perſons of various Claſſes are at this Day diſqualified." To prove the contrary, it is ſufficient to remark, that thoſe Reſolutions were all Judgments upon Caſes before them, according to what *was* the Law before, and not Declarations of what ſhould *become* the Law. The Houſe of Commons, in thoſe Days, would have been ſtruck with the Injuſtice of an *ex poſt facto* Law. There is a Proof (in the Caſe of Sir Andrew Nowell, Sheriff of Rutland, in D'Ewes's Journal) that the Houſe thought themſelves obliged to conform to the Rules of the Common Law, in Preference to their own Precedents where they were contradictory: Sir Edward Hobby ſaid, The Houſe might well receive Sir Andrew Nowell; and he vouched a Precedent of the 31ſt of the Queen, when a Writ was directed to the Bailiffs of Southwark to return Burgeſſes, and they returned themſelves, and were received. It was urged on the other ſide, That, by the Common Law, no Man can make an Indenture to himſelf. Sir Andrew Nowell was not received.

The Author ſays (Page 32.), That, upon Mr. Wilkes's being returned after his Expulſion, the Houſe reſolved, "That he was "and is incapable of being elected to ſerve in this preſent Parliament." *Therefore*, admitting that his Incapacity was *not a neceſſary Conſequence* of his Expulſion, which the Freeholders were bound to take Notice of, yet "this *expreſs* Declaration "of Incapacity was ſuch as all the Freeholders of Great Britain "were bound to take Notice of." What would this Gentleman think of a Court of Juſtice, which, having tranſported a Man for ſeven Years for a Felony, ſhould upon his Return think that he ought to have been hanged, and *therefore* condemn him to be hanged for the *ſame* Crime?

The Author then cites ſome Corporation Caſes, in which Perſons having the Majority of Votes were not allowed by the Courts below, upon Diſqualifications proceeding from the fundamental Conſtitutions of thoſe Corporations, to juſtify *ſuch* a Proceeding by the Houſe of Commons, contrary to the fundamental

mental Conſtitution of Parliament and expreſs Statutes; and this he calls a happy Inſtance of the perfect Agreement and Correſpondence between the Adjudications of the Courts of Weſtminſter, and the Determinations of the Houſe of Commons.

The Author having ſet out with ſaying, "Removed, as the "far greater Part are, from the Source of true Intelligence, "how eaſy is it for thoſe who have an Intereſt in impoſing on "the Public, to miſlead them by falſe Repreſentations?" is determined to try how far he can impoſe upon them by a ſecond flagrant Miſrepreſentation of the Proceedings of the Houſe. He ſays (Page 37.) "Nay, indeed, it has been admitted on the "other Side, that they (the Votes) were thrown away; for on "the Queſtion, Whether the foregoing Elections of Mr. Wilkes "were null and void? they were without a Diviſion deter-"mined to be null and void." This did not proceed, as this Writer pretends, from a general Admiſſion that the Votes were null and void, but from the neceſſary Obſervation of that Rule of Proceeding by which the Houſe of Commons is precluded from reſcinding a Reſolution it has come to in the ſame Seſſion.

In Page 38. we find the Author endeavouring to get rid of that Part of Mr. Walpole's Caſe which makes directly againſt him; Mr. Taylor's not being received when Mr. Walpole's Election was declared void. For this Purpoſe, he ſays, "Inaſmuch as it was the firſt and only Inſtance in which "the Electors of any County or Borough had returned a Per-"ſon expelled to ſerve in the ſame Parliament, and the Electors "might be preſumed not to have due Notice of the Effect of "Expulſion, the Houſe gave them an Opportunity to cor-"rect their Error." He allows, that "It may be ſaid, in-"deed, that by their voting for a Perſon ineligible, a Right "attached, by Operation of Law, in Mr. Taylor." It is not at all ſurpriſing, that it ſhould coſt an Author nothing to diſpoſe of Mr. Taylor's Right by a Vote of Parliament, who writes with a profeſſed Intention to prove that the legal Rights of all the Electors may be diſpoſed of by a Vote of the Houſe of Commons. Had this Gentleman fully quoted Mr. Walpole's Caſe, as I have done, it would have appeared that the Houſe of Commons refuſed to admit Mr. Taylor, from a Conviction that they had no Right to do it, and not from a Preſumption that the Electors were ignorant of ſuch a Right (had it exiſted); ſince Mr. Taylor's Friends actually did aſſert it in their Petition*; though the Houſe refuſed to countenance the Claim by hearing the Petition. Let us ſtop for a Moment here, and ſee what the Hiſtory of this Law of Expulſion and Incapacity is, as it is given us by the Author himſelf. Seventy Years ago, the Houſe (in the Caſe of Mr. Woolaſton), from not *knowing* the Effect of the *known* Law of Parliament, uſed an Expreſſion

* Vide Mr. Walpole's Caſe, ſupr. Page 23.

which

which meant the very Reverſe of what they intended. About ſixty Years ago, the Houſe of Commons, from a Preſumption that the Electors were ignorant of the *known* Law (notwithſtanding " * There cannot be a ſtronger Inſtance that, in the " general Senſe of Mankind, ſuch Incapacity is the neceſſary " Effect of Expulſion, than that of there having never been " any Attempt made to re-elect one in the ſame Parliament, " out of the very many that have been expelled, except in " the ſingle Inſtance of Mr. Walpole,") thought proper *to exerciſe a Power of diſpenſing with that Law, which is the Birthright and Inheritance of every Engliſhman*, to the Prejudice of Mr. Taylor and thoſe Electors who had not thrown away their Votes, though they actually claimed the Benefit of it.

The Author apprehends great Danger to the Conſtitution, if, " by arbitrarily keeping Seats vacant, the Houſe may be " purged, as in Oliver's Time, to any Degree a Miniſter thinks " proper;" but he thinks this Danger may be prevented *by arbitrarily filling them up with whoever a Miniſter thinks proper*. He tells us (Page 42.) " All that is contended is, that " they (the Electors) have exerciſed their *Right* INEFFECTUALLY." Here we are likely to agree for once; for all that is complained of is, that the Electors having *exerciſed* their *Right*, it was not ſuffered to *have* its *Effect*. He, however, comforts them, by *graciouſly* aſſuring them, that " *No one means* " *to take away their Franchiſe*;" and that " They have ſtill the " Right of voting, on any future Occaſion, for whom they " pleaſe, being *duly qualified*;" (*that is, not diſagreeable to the Miniſtry*). " To remove the Apprehenſions (if ſerious) of thoſe " who ſay, at this Rate the Houſe of Commons may declare " that no Freeholder under ten Pounds a Year ſhall vote at an " Election for a Knight of the Shire, he aſſures them, that the " Statute of Hen. VI. having fixed the Qualifications of the " Freeholders at 40 s. *per Ann.* it is not in the Power of the " Houſe of Commons, nor of any Judicature whatſoever, to " alter it: The Legiſlature only can enlarge or diminiſh the " Qualification," I add, either of the *Electors* or *Elected*; and ſhould be glad to know what greater Security a Freeholder of 40 s. has that he ſhall be admitted to chuſe, than a Gentleman of 600 l. a Year that he ſhall be allowed to be choſen: The Rights are equally ſecured by Law: The Power which can annihilate the one, can violate the other. Suppoſe ſome miniſterial Dependant (perhaps this very Author) ſhould ſtand up in the Houſe, and tell them, " That there is indeed " *an obſolete Statute*" of Hen. VI. that fixes the Qualification of Electors at 40 s. *per Ann.* but that when that Statute was made " 40 s. were equal to 20 l. now; that they have a recent Proof " in the Behaviour of the County of Middleſex, how improper " it is to allow the *Scum of the Earth* a Share in the Choice of

* Page 10. of the Caſe Conſidered.

" Members

" Members to fit in that auguſt Aſſembly." Suppoſe this Reaſoning backed by the Miniſtry, and adopted by the Houſe of Commons, who, in Conſequence of it, declare by a Reſolution, that no Freeholder ſhall vote who has not ten or twenty Pounds *per Ann.* How is this Vote to be prevented from taking Effect? Have they not " the ſole and excluſive Power of exa- " mining and determining the Rights and Qualifications of " Electors and Elected, together with the Return of Writs, " and *all Matters incidental to Elections?*" Are not their Judgments " the more binding becauſe they are without Appeal?" and are they not " *the proper and ſole Judicature, entruſted with* " *the Expoſition of the Law in ſuch Caſes?*"

The Author in the ſame Page (43) in his great Eagerneſs to accuſe and blacken the Oppoſition, makes two very unguarded Confeſſions, which his Friends in Adminiſtration will not be obliged to him for: The one is, " That they have not " employed the proper Attention to Improvements for the public " Good." This the People have long ſeen, and long complained of. The other Confeſſion, which makes *their Juſtification* from this Crime, and the Accuſation againſt the Oppoſition, is, " That " they beſtowed *that* Attention upon the Management of this " Election." It has long been felt and complained of in this Conſtitution, that Miniſters did interfere in and influence Elections; but never till now had any Miniſter or his Dependents the Effrontery to avow it, or the Folly to plead it as an Excuſe for their Neglect of Duty. It becomes the People to look about them: When Miniſters diſdain to ſave Appearances, it is not to be expected they will forbear to invade real Rights. Even Hypocriſy has its Merit, when it ſerves to reſtrain more daring Vices.

I ſhall conclude this with an Obſervation of this Author's upon the Proceedings of the Houſe of Lords, the Application of which, *to thoſe of another Aſſembly*, I ſhall leave to you: " An inſatiable Appetite for Power is natural to all Bodies of " Men; and if the Judgment of that auguſt Aſſembly may be " preſumed to have leſs Authority in one Caſe than another, it " muſt certainly have leſs Weight in this, wherein their Judg- " ment directly tended to enlarge their own Juriſdiction, and " ultimately to give them a manifeſt Aſcendancy over the third " Eſtate of the Kingdom, and conſequently over the Liberties " of the People of Great-Britain."

FINIS.